Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

AZAM ANSARI,

Petitioner,

v.

DIAMOND PATH HOMEOWNERS' ASSOCIATION and ROBERT B. FINE, ESQ.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For The State Of Minnesota

PETITION FOR WRIT OF CERTIORARI

AZAM ANSARI
12954 Echo Lane
Apple Valley, MN 55124
(612) 333-7010
Petitioner Pro Sé

18 pgs

QUESTIONS PRESENTED

1. Whether the opinion of the Minnesota Court of Appeals conflicts with the opinions in *Thies v. The Law Office of William A. Wyman,* 969 F. Supp. 604 (S.D. Cal. 1997), *Maguire v. Citicorp Retail Services, Inc.*, 147 F. 3d 232 (2nd Cir. 1998), *Mertes v. Devitt*, 734 F. Supp. 872, 873 (W.D. Wis. 1990), *Nance v. Petty, Livingston, et al.*, 881 F. Supp. 223 (W.D. Va. 1994)?

2. Whether judgment on pleading in claims under 15 U.S.C. §§ 1692 (FDCPA) can be granted when questions of fact exist and when the Respondents have not yet responded to discovery requests and first production of documents?

3. Whether the lower courts knowingly failed to afford Petitioner an opportunity to procedural due processes of law such as discovery and to amend complaint?

PARTIES TO THE PROCEEDING

Petitioner Pro Sé Azam Ansari was the Plaintiff in a civil action in the District Court and the Appellant in the Minnesota Court of Appeals.

Respondents are Diamond Path Home Owners Association and Robert B. Fine, Esq., who were Defendants in the District Court and Respondents in the Minnesota Court of Appeals.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions the United States Supreme Court for a writ of certiorari to review the decision of the Minnesota Court of Appeals in this case.

OPINIONS BELOW

The Minnesota Court of Appeals' opinion is an unpublished and restricted opinion, Case No. C3-01-1674 (App. 1-4). The District Court Order was entered on August 2, 2001 (App. 5-6). Judgment was entered on August 28, 2001 (App. 7-8).

STATEMENT OF JURISDICTION

The decision of the Minnesota Court of Appeals was filed on February 12, 2002. The Minnesota Supreme Court denied Petition to review the above decision on April 16, 2002 (App. 9). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Likewise, jurisdiction is found pursuant to Supreme Court Rules 13(1) and (3). This Court may also exercise supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

STATUTORY PROVISIONS INVOLVED

1. 15 U.S.C. §§ 1692 (FDCPA) as amended [15 U.S.C.A. § 1692a(6)] by the 1986 amendment substantive to apply to Attorneys (see page 10 for defining the subject matter).

2. 15 U.S.C. § 1692g(a), defining the subject matter of validation of disputed debt (App. 10).

3. 15 U.S.C. § 1692g(b), defining the provision of disputed debt or any portion thereof (App. 11).

4. 15 U.S.C. § 1692e, defining the subject matter of false or misleading representation (App. 11-12).

5. Minn. Statute § 515 B.3-107(a), defining the subject matter of the maintenance, repair, and replacement of common elements (App. 12).

STATEMENT OF THE CASE

A. Basis of Jurisdiction in the Court of First Instance and the Minnesota Court of Appeals.

The petitioner initiated this action in the First Judicial District in Dakota County, State of Minnesota, against the Respondents by setting forth claims of violations of the Fair Debt Collection Practice Act (FDCPA), specifically 15 U.S.C. § 1692g(b) and Minnesota Common Interest Ownership Act, specifically Minnesota Statute § 515 B.3-107(a) and sought relief against their abusive and unfair lien foreclosure which included disputed debt *not* verified as mandated under the FDCPA and declaratory judgment. District Court jurisdiction and the Minnesota Court of Appeals were invoked under 15 U.S.C. § 1692k(d) providing in pertinent part that all action to enforce the FDCPA may be brought in "District Courts or any other Court of competent jurisdiction" as specifically addressed by Congress.

B. Proceedings Below

On September 7, 2000, the Respondents sent first debt letter (App. 13-14). The Petitioner disputed the validity of the debt within two weeks (App. 15). The Respondents failed in their promise to validate the disputed debt (see footnote of App. 14), and started lien foreclosure which included outlawed debt of prior dismissed action[1] (App. 16-24).

On May 25, 2001, the Petitioner filed a complaint[2] in the above-named District Court, claiming violations of 15 U.S.C. § 1692g(b) and Minn. § 515B.3-107(a) and sought relief against abusive lien foreclosure and other relief as provided in 15 U.S.C. § 1692K(a)(2)(A), as well as declaratory judgment under Minnesota Statute Chapter 555 (App. 25-35). Respondents' answer denied allegation (App. 36-39).

On July 19, 2001, the Petitioner responded timely to the Respondents' discovery request and production of documents of June 21, 2001 (App. 40). The Respondents have not answered his discovery requests and production of the document to date (App. 44).

On August 2, 2001, the Honorable Patrice K. Sutherland, Judge of the District Court, ignoring questions of the fact and outstanding discovery requests and scheduling

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[1] For economic reasons, Diamond Path Homeowners Association's former attorney did not appeal and withdrew in May 2000. Respondent Fine, when replacing, made a calculated but legally prohibited decision to add the debt previously claimed but denied by the Court. App. 19-24 related to that action as provided under S. Ct. Rule 14(i)(vi) because the Petitioner believes they are essential to understand the Petition.

[2] Prepared for a fee by a law firm experienced in litigation.

issues, ordered dismissal of case on pleading (JOP) without entry of judgment (App. 42-48, 5).

On August 28, 2001, at the behest of the Minnesota Court of Appeals Chief Judge's order, Judge Sutherland entered Judgment (App. 7-8).

On August 30, 2001, the Respondent foreclosed the Petitioner's townhome for $10,361.25 (App. 49-51).

On October 4, 2001, the petitioner appealed from that Judgment. On February 15, 2002, the Minnesota Court of Appeals Affirmed (App. 1-4).

On March 11, 2002, the Petitioner submitted a petition for review of the Court of Appeals' decision to the Minnesota Supreme Court, which it denied on April 16, 2002 (App. 9).

The Petitioner, relying on the exercise of this Court's judicial discretionary powers, is submitting this petition for a Writ of Certiorari.

C. Facts Material to Consideration of the Questions Presented

1. The Diamond Path Homeowners Association (DPHOA) is a nonprofit corporation registered in the State of Minnesota to provide maintenance, repair, and replacement of common areas for a monthly assessment to the Diamond Path Townhome homeowners in Dakota County, Apple Valley, Minnesota. Its rules and regulations and declaration 9-1 clearly admit to this obligation under Minn. Statute § 515B.3-107(a) (App. 12).

2. The DPHOA has long ignored verbal and written reminders to repair the common area in disrepair. It

has continued violating its own rules and regulations and declaration 9.1.

3. Because of DPHOA's lack of maintenance, repair and replacement of common area for personal, family, and other household purposes, independently witnessed by others, the Petitioner withheld three months' (March, September, and November) assessment dues (total $325.00) in the year 2000 (App. 58). He has paid all assessment dues to date (App. 62-75).

4. Robert B. Fine, Esq., is an attorney admitting collecting debt for DPHOA, hence the other Respondent in this case (App. 13-14). He confirmed to the District Court that the lien foreclosure is based on the debt owed in the year 2000 (App. 61). The lien statement, however, indicates that the assessment debt owed is $1215.00 (App. 16). The difference between the true assessment debt owed under FDCPA ($325.00) and the falsely claimed assessment debt ($1,215.00) approximates the outlawed debt of a prior action, not counting the late fee debt in both figures (App. 19-20). Therefore, Mr. Fine would not validate the disputed assessment debt or any portion thereof despite his earlier promise (App. 14; see footnote). He lied under oath to the Court that the Petitioner did not respond within 30 days (App. 60). A comparison of these two letters compels that conclusion under the Mail Box Rule. The Respondents, by failing to verify, are covering up the addition of the outlawed debt (App. 19-20).

5. The Petitioner has been a naturalized citizen since 1976 and has served as a juror twice in the same District Court. He disputed the validity of the debt claimed by the Respondents within two weeks under 15 U.S.C. § 1692g(b).

6. The Petitioner has responded timely to the discovery requests and production of documents requests of the

Respondents (App. 40). However, he has not received from them any response to his similar requests allowed under legal procedural due process to date (App. 41). Obviously, this stonewalling is designed to obstruct discovery by the Petitioner of the debt collection practice of Mr. Fine, who has been suppressing the truth about the false representation of the debt.

7. Many issues of genuine material facts[3] exist in this case such as disputed debt, failure to verify, false representation of the debt, violation of DPHOA's rules and regulations and Declaration 9.1, and obstruction to the procedural due process of law, all of which warrant a determination based on evidence, not on JOP.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION OF THE MINNESOTA COURT OF APPEALS OVERLOOKS THE DECISIONS OF *THIES V. THE LAW OFFICE OF WILLIAM WYMAN*, 969 F. SUPP. 64 (S.D. CAL. 1997) AND CONFLICTS WITH *MAGUIRE V. CITICORP RETAIL SERVICES, INC.*, 147 F. 3D 232 (2ND CIR. 1998).

"Homeowners Association is responsible for the maintenance, repair, and replacement of common elements", Minn. Stat. § 515B.3-107(a). DPHOA has long violated its own rules and regulations, Declaration 9.1, and the above-cited Minnesota state statute (App. 52, 57, 12). Petitioner's withholding of three assessment dues because

[3] An issue of material fact is genuine if it has a real basis in the record. *Hartnagel*, 953 F. 2d at 394 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.C. 574, 586-87 (1986)).

of DPHOA's default resulting in lack of maintenance, repair and replacement for "personal, family and household purpose" under the FDCPA is *not* unprecedented. Petitioner cited *Thies v. The Law Office of William Wyman, 1997,* as an authority to support his arguments in the Appeals Court Brief and Reply Brief (App. 76, 82-83). There are incredibly striking similarities between the two cases. In *Thies*, Plaintiffs, like Petitioner, withheld two assessment dues because a common area was in disrepair. *Id.* at 605. Plaintiffs were unsuccessful in their attempt to have their homeowners association repair the area, just as Petitioner's has been. *Id.* The *Thies* Court held that Plaintiffs owed a "debt" within the definition of the FDCPA because this obligation arose out of a "transaction" which is primarily for "personal, family or household purposes." *Id.* at 608. It therefore *denied* JOP to the Defendants, holding that *Plaintiff has stated a claim under the FDCPA*, reasoning that the maintenance and improvement of common areas serve a "personal, family or household purpose" as required by the FDCPA. *Id.* at 608 [emphasis added] The Court of Appeals decision misstated that the Petitioner did not give any reason for withholding three assessment dues and also did not provide any authority (App. 3). This is an unjust and conspicuous oversight. He did provide both, more than once (App. 76, 82-83) and, based on the *Thies* Court, has stated a legally sufficient claim under the FDCPA.

The Court of Appeals cited *Newman v. Boehm*, 119 F. 3d 477 (7th Cir. 1997) stating that DPHOA is not a debt collector as it is the creditor. This conflicts with *Maguire v. Citicorp Retail Services, 1998,* because whenever a third party name is used even by the creditor who owns the debt, the Court may find that the activity is *within the*

FDCPA. The *Maguire* Court ruled that the least (un)sophisticated debtor would have the false impression that a third party was collecting the debt even though it was indeed the creditor.

II.

THE DECISION OF THE MINNESOTA COURT OF APPEALS CONFLICTS WITH THE DECISION OF *MERTES V. DEVITT*, 734 F. SUPP. 872, 873 (W.D. WIS. 1990) AND *NANCE V. PETTY, LIVINGSTON, ET AL.*, 881 F. SUPP. 223 (W.D. VA. 1994).

The Minnesota Court of Appeals stated "Appellant had the burden of establishing a proper record to show the nature and percentage of Fine's practice to show Fine is a debt collector. Appellant failed to meet that burden, thus Appellant's FDCPA claim does not state a valid cause of action" (App. 3). Obviously, this required burden mandates the completion of procedural due process of discovery under the FDCPA. Petitioner begs this question to the Court: How could the Petitioner "meet that burden" without obtaining discovery? The Respondents have stonewalled the Petitioner's *first* Interrogatories and Request for Production of Documents served upon them on June 29, 2001 (App. 41). This is in sharp contrast to his timely response to their request (App. 40).

In the above context, the Court of Appeals' reliance on *Mertes v. Devitt* is a misapplication of this authority, because the *Mertes* Court held that it denied Defendant's JOP because Plaintiff had *not* had *sufficient* opportunity to obtain discovery of the nature of Defendant's debt collection practice. *Mertes,* 734 F. Supp. 1990 at 873 [emphasis added]. It was only *after* discovery was completed that the

Mertes Court ruled [emphasis added]. Careful examination of the *Mertes* decision compels the conclusion that the Court of Appeals decision in this case conflicts with the clear teaching of the *Mertes* Court that JOP in a claim under FDCPA cannot be granted until discovery is legally completed. Based on the latter, the Court of Appeals should not have affirmed but, instead, reversed the JOP and remanded the case to the District Court with instructions to complete discovery on the principles of procedural due process under law.

Similarly, the Court of Appeals' reliance on *Nance v. Petty, Livingston et al., 1994,* underscores the misapplication, because the *Nance* Court had also allowed discovery to be completed to determine the nature of the debt collector's practice. *Id.* at 225. Furthermore, the *Nance* Court considered the entire matter under Federal Rule 56, *not* Federal Rule 12(b)(6). *Id.* at 224 [emphasis added]. The Minnesota Court of Appeals was reviewing the District Court's JOP under Rule 12(b)(6). The Court of Appeals also overlooked the fact that the Petitioner has properly stated a claim under the FDCPA based on the clear teaching of the *Thies* Court (see Reason I, page 6).

III.

THE UNDERLYING BASIS OF DECISIONS OF THE DISTRICT COURT AND THE COURT OF APPEALS PRESENTS A CURIOUS LEGAL PARADOX THAT NEEDS REVIEW.

The District Court ordered JOP by ignoring the controlling legal principles of question of facts and discovery. It states granting of the Defendants' (Respondents') motion for JOP against the Plaintiff's (Petitioner's) motion

to compel discovery (App. 7). This is a twisted paradox, because both items were the subject of the Defendants' motion (App. 84). How could the Petitioner move to compel his first discovery and request production of documents when they were not due until July 29, 2002 – that is, three days *after* the hearing of the motion (App. 41)? The Petitioner's motion instead was about obtaining a discovery scheduling from the Court (under Rule 111.03) to which both parties would adhere by using the Court's set guidelines. The Court stated during the July 26 hearing that Central Assignment would issue one, but then blocked it by ordering JOP before it could be issued (App. 45).

The Court of Appeals affirmed the District Court Order and Judgment under the mistaken belief that discovery was already completed, when it stated that the Petitioner did not keep careful record of Fine's debt collection practice. Both Courts failed to afford the Petitioner an opportunity, let alone *sufficient* opportunity, to obtain discovery so vital to his claim under the FDCPA. The Petitioner argued about the lack of such opportunity and access to this particular procedural due process in his brief and, in fact, requested that the Court of Appeals opine on this issue (App. 77-78, 81). It kept silent. Thus, both JOP and its affirmation are unfair and unjust, because both Courts have condoned the stonewalling of the discovery by Fine. This procedural due process is crucial to a claim under the FDCPA which the *Mertes* and *Nance* Courts have so keenly followed and set an example of.

IV.

THE LOWER COURTS HAVE MADE A CONCERTED EFFORT IN THIS CASE TO DEBUNK FDCPA IN ORDER TO PROTECT THE UNFAIR DEBT COLLECTION PRACTICE (UNFDCP) ACT OF RESPONDENT FINE.

The Courts have been encouraged by Congress to provide relief to remedy any attorney's violation of the FDCPA. Towards this objective, it amended the FDCPA [15 U.S.C.A § 1692a(6)] in 1986 (the only amendment since the initial enactment of the Act in 1977) by adding a simple, unambiguous and unequivocal definition of the "debt collector" as follows:

> Any person who uses any instrumentality of interstate commerce or the mail in any business, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debt owed or due or assessed to the owed or due another.

Although the above definition is quite simple and unambiguous, the Courts, including the Court of Appeals, have interpreted it inconsistently. See *Thies v. The Law Office of William Wyman,* 769 F. Supp. 604 (S.D. Cal. 1997); *Crossley v. Lieberman*, 868 F. 2d 566 (3rd Cir. 1989); *Nance v. Petty, Livingston, et al.,* 881 F. Supp. 223 (W.D. Va. 1994). This Court instructed in *Demarest v. Manspeaker*, 498 U.S. 184, 190 (1991): "When we find the terms of a statute unambiguous, judicial inquiry is complete. . . . " Further, in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), this Court emphasized that a reviewing "Court . . . must give effect to the unambiguously expressed intent of Congress." This emphasis

correlates with the legislative history of this amendment when " . . . Both sides in the floor debate conceded that the amendment would make the Act apply not only to those lawyers who have collection practices but also to those who collect on an occasional basis and the small law firm which collects debt incidentally to the general practice of law," *Lieberman, 1989 Id.* at 569. The Court of Appeals decision conflicts with the unambiguously expressed legislative intent of the Congress and that legislative intent is well applicable to Respondent Fine.

Further, in a line of decision consistent with the above legislative intent, other Courts have characterized attorneys as debt collectors even though the majority of their practice involves non-debt collection. *Stojantovski v. Strobl* and *Manoogian P.C.,* 783 F. Supp. 319 (E.D. Mich. 1992). In view of the above arguments, any reliance by the Court of Appeals on the *Nance* Court and *Newman v. Boehm,* 119 F. 3d 477 (7th Cir. 1997) for restrictedly defining a debt collector is meritless. Further, in *Newman,* 1997, the Seventh Circuit held that "assessment . . . used to improve or maintain commonly owned areas . . . qualifies as personal, family or household purpose . . . " just like the *Thies* Court, 1997, did. These two concordant opinions in the same year support the contention that the debt owed in this instant case was indeed under the FDCPA and thus the Petitioner has appropriately and correctly stated his legally sufficient claim against the Respondents.

Mr. Fine argues that he merely represents DPHOA, which retained him for lien foreclosure and not as debt collector, therefore the Petitioner does not have a claim against him under the FDCPA. The Courts have extended the term "debt collector" to any attorney whose practice is

limited to foreclosure. *Shapiro and Meinhold v. Zartman,* 823 P. 2d 120 (Colo. 1992).

False representation of debt under the FDCPA violates the FDCPA. *Kimber v. Federal Financial Corp.,* 668 F. Supp. 1480 (M.D. Ala. E.W. 1987). *Watkins v. Peterson Enterprises, Inc.,* 57 F. Supp. 2d 1102 (E.D. Wash. 1999). Fine has knowingly added outlawed debt of a prior disarmed action. This is reflected in the noticeable discrepancy between the true ($325.00) and the false ($1,215.00) assessment dues debt (App. 62-77). He promised verification if the debt was disputed (App. 14; see footnote) but when it was, he lied to the Court under oath that the Petitioner did not respond within 30 days (App. 60). Both Courts have knowingly ignored Fine's flagrant violations of 15 U.S.C. § 1692g(a)(b), § 1692e and § 1692(f), which make his lien foreclosure unconscionable, abusive, and unjust. This Court, as the mother supreme of all Courts and as a responsible parent of the FDCPA, cannot afford to look the other way while the FDCPA is being swept under the rug. In this instant case, this Court is being requested to protect and preserve the legislative intent and the purpose for which this law was passed and enacted by Congress on September 20, 1977.

V.

THE PETITIONER'S COMPLAINT SETS FORTH LEGALLY SUFFICIENT CLAIMS FOR RELIEF AND TO WITHSTAND A JUDGMENT ON PLEADING.

Minnesota is a notice pleading state. The primary function of notice pleading is to give adverse party fair notice of the theory upon which claim for relief is based.

Barton v. Moore, 558 N.W. 2d 746, 749 (Minn. 1997). Realizing that pleading is no longer a game of skill or surprise, Minn. Rules are intended to do substantial justice by promoting trial on merits. "All pleadings shall be constructed as to do substantial justice," Minn. R. 8.06. All that is required of the complaint is "a plain statement of the claim and a demand for judgment," Minn. R. Civ. P. 8.01. The Petitioner's Complaint met all these threshold requirements to withstand a JOP when he specifically pleaded under 15 U.S.C. § 1692g(b) and Minn. Statute § 515B.3-107(a), provided sufficient basis of facts, and sought appropriate relief.

On a motion for JOP, under Fed. Rule Civ. Proc. 12(6)(b), the allegations set forth in the pleading are given the most liberal construction. *State Ex. Rel. City of Minneapolis v. Minneapolis St. Ry. Co.*, 56 N.W. 2d 564, 567 (Minn. S.C. 1952). In making a determination of JOP, the Court *must* draw all reasonable inferences in its favor. *Usher v. City of Los Angeles*, 828 F. 2d 556, 561 (9th Cir. 1987) [emphasis added]. In this case, neither lower Court gave any liberal construction nor drew a single reasonable inference in favor of the Petitioner, which attests to the fact that controlling legal principles were completely ignored. In view of Fine's stonewalling of the Petitioner's discovery request and first request for the production of documents, the Courts should have drawn a reasonable inference that Fine may be a debt collector under the amendment to FDCPA and let the discovery process move forward to completion by a Court-specified date before considering any motion for JOP in a claim under the FDCPA. Such a simple and reasonable inference would have prevented the premature JOP and obstruction of procedural due process, and justice would undoubtedly

have been served. Such an injustice overshadows the true reflection of "Equal Justice Under Law" engraved on this Court by the late Chief Justice Howard Taft (1921-1930).

If the Petitioner's complaint did not set forth legally sufficient claims for relief, why is it that: (a) the Respondents obstructed discovery and the first request for production of the documents; (b) the District Court ordered JOP so hastily and then delayed judgment entry for four weeks; (c) the Court of Appeals misapplied the authorities it cited in its decision; and (d) it overlooked the important and truly applicable authority of *Thies v. The Law Office of William Wyman,* 1997, cited more than once by the Petitioner? There has to be a reason; the truth of the matter is that the Petitioner's complaint does state legally sufficient claims upon which relief should be granted and discovery should have been mandated.

VI.

THE LOWER COURTS' DECISIONS REFLECT SEVERAL MANIFEST INJUSTICES WHICH NEED TO BE UNDONE FOR JUSTICE DUE.

A. At the District Court:

1. Ordering JOP when there are questions of facts such as disputed debt, failure to verify, false representation of debt, violations of DPHOA's bylaws and declaration 9.1. "If question of fact exists, Court should not order JOP." In re *Matter of Trust by Hormel*, 543 N.W. 2d 668, 671 (Minn. Ct. App. 1996).

2. Ordering JOP before discovery completion in a claim under the FDCPA. JOP cannot be ordered

under the FDCPA until discovery is complete. *Mertes v. Devitt,* 1990.

3. Ordering JOP despite improper service of motion by the Respondents, ignoring Minn. R. Civ. Proc. 6.04 and 6.01. Improper service of motion in a manner not complied by a rule is ineffective and should not be granted (App. 78-79). Continuance would have been a better option. It was requested but ignored (App. 81).

4. No judgment entry to the order for four weeks, causing delay in filing an Appeal.

5. Dismissing Petitioner's legally sufficient claim against Respondent Fine under the FDCPA before hearing the argument (App. 43).

6. Striking Petitioner's motion (submitted July 24, 2001) to amend the complaint in the midst of presentation on August 3, 2001, citing the order without judgment entry posted in the mail on August 2, 2001, but not received by either party. The Respondents failed to appear at that motion (App. 89-90).

B. At the Minnesota Court of Appeals:

1. Failure to perform *de novo* review,[4] resulting in several oversights. The Appellate Court reviews a District Court's decision *de novo. Art Gobel, Inc. v. North Suburban Agencies, Inc.,* 567 N.W. 2d 511, 515 (Minn. 1997). Any questions of law are "subject to *de novo* review." *Suchy v. Illinois Farmers*

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[4] A *de novo* standard of review is used to determine whether the District Court erred in its application of the law.

Ins. Co., 574 N.W. 2d 93, 95 (Minn. Ct. App. 1998).

2. Incorrectly assuming that discovery process was complete, yet the Petitioner did not keep a careful and complete record of Respondent Fine's debt collection practice. Instead of ensuring that there was no error of omission of the procedural due process by the District Court, the Court of Appeals caused an error of commission of its own.

3. Misapplication of clear teaching of *Mertes v. Devitt, 1990.*

4. Misapplication of *Nance v. Petty, Livingston, et al., 1994.*

5. Misstating that the Petitioner did not provide any cause or authority to support his claim under Minn. Statute § 515B.3-107(a) (App. 3). He did both more than once by drawing its attention to the violation of DPHOA's rules and regulations and declaration 9.1 and citing *Thies v. The Law Office of William Wyman, 1997* (App. 76, 82-83).

C. At the Minnesota Supreme Court:

1. Denying petition for review of the Minnesota Court of Appeals' decision despite multiple oversights, misapplications, and misstatements and a greater likelihood of success for the Petitioner as a result.

The above manifest injustices involving this instant case warrant the exercise of this Court's judicial discretionary powers, because proper and adequate relief cannot be obtained by the Petitioner and other consumers and homeowners like him in any other form or from any other Court.

VII.

THE QUESTIONS PRESENTED ARE IMPORANT.

In this case, the entire congressional intent in drafting, passing, enacting, and amending FDCPA to protect consumers from unfair and abusive debt collections of the attorneys has been thwarted and threatened to be undermined. The Court of Appeals' affirmation of the District Court's erroneous, unjust, and premature ordering of the JOP before discovery completion in this case under the FDCPA is explosive to this clear and present danger. Similarly, the enacting of Minn. Stat. § 515B.3-107(a) to regulate the homeowners' associations like DPHOA to maintain, repair, and replace the common areas' disrepair is at stake. Therefore, the questions presented above are quite important to the protection of consumers and homeowners like the Petitioner and deserve to be addressed and heard by this highest Court in the nation.

This Court should grant writ of certiorari to review the apparent conflicts between the Minnesota Court of Appeal's decision and that of *Thies v. The Law Office of William Wyman, 1997; Maguire v. Citicorp Retail Services, Inc., 1998; Mertes v. Devitt, 1994;* and *Nance v. Petty, Livingston, et al., 1997.* See *N.L.R.B. v. Metropolitan Life Insurance Company,* 380 U.S. 438, 85 S. Ct. 1061, 136 L. Ed. 2d 1951 (1965).

CONCLUSION

For the reasons set forth above, the Petitioner requests that the petition for a writ of certiorari be granted.

Dated this 31st day of May, 2002.

Respectfully submitted,

AZAM ANSARI
(*Petitioner Pro Sé*)
12954 Echo Lane
Apple Valley, MN 55124
Telephone (612) 333-7010
Fax (612) 321-0331

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2000).

STATE OF MINNESOTA
IN COURT OF APPEALS
C3-01-1674

Azam Ansari,
Appellant,

vs.

Diamond Path
Homeowners' Association, et al.,
Respondents.

Filed February 12, 2002
Affirmed
Foley, Judge*

Dakota County District Court
File No. C2018186

Azam Ansari, 12954 Echo Lane, Apple Valley, MN 55124
(pro se appellant)

Robert B. Fine, P.O. Box 24192, Edina, MN 55424-0192
(for respondents)

Considered and decided by Willis, Presiding Judge, Shumaker, Judge, and Foley, Judge.

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10

UNPUBLISHED OPINION

FOLEY, Judge

Appellant pro se Azam Ansari challenges the district court's judgment dismissing his suit on the pleadings. Appellant's complaint (1) sought a declaratory judgment stating he reasonably withheld association dues because of the inadequate maintenance of his common area lawn; and (2) sought compensation for an FDCPA claim. We affirm.

DECISION

The only question on review from a judgment on the pleadings is whether the complaint set forth a legally sufficient claim for relief. *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). The court should not order judgment on the pleadings if there are any questions of fact. *In re Trusts by Hormel*, 543 N.W.2d 668, 671 (Minn. App. 199) A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

I.

In his complaint, appellant seeks a declaratory judgment that respondent Diamond Path Homeowners' Association (DP) failed to maintain appellant's lawn pursuant to Minn. Stat. § 515B.3-107 and that he was justified in withholding association dues because of this failure. While section 515B.3-107 does state that an association is responsible for the maintenance, repair, and replacement of common elements, it does not authorize withholding association dues for a failure in such regard.

Minn. Stat. § 515B.3-107 (2000). Since appellant cites no authority justifying withholding his association dues and no justification is apparent, appellant's complaint fails to state a valid cause of action on this issue.

II.

Appellant's complaint also involves a claimed violation of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1962 (1994), where appellant sought review of a previous case he was involved in, emotional distress damages, and a civil award. Appellant's efforts to reopen a previous case are irrelevant to this matter and do not assert a valid cause of action. Appellant's FDCPA claim against DP lacks merit because DP is a creditor, not a debt collector, and, thus, not subject to the FDCPA. *Newman v. Boehm, Pearlstein & Bright, Ltd.*, 119 F.3d 477, 483 n.3 (7th Cir. 1997).

Appellant's complaint also contains a FDCPA claim against respondent Robert Fine. But the complaint does not allege that Fine is a debt collector for purposes of the FDCPA. The FDCPA defines a debt collector as one whose principal business is the collection of debts. 15 U.S.C. § 1692a(6). Some courts have interpreted this to mean that a law firm is not a debt collector when it's debt collection practice consists of only a small percentage of its overall practice or a small number of cases. *See Nance v. Petty, Livingston, Dawson & Devening*, 881 F. Supp. 223, 224 (W.D. Va. 1994); *Mertes v. Devitt*, 734 F. Supp. 872, 874 (W.D. Wis. 1990). Appellant had the burden of establishing a proper record to show the nature and percentage of Fine's practice to show Fine is a debt collector. Appellant failed to meet that burden. Thus, appellant's FDCPA claim

does not state a valid cause of action. We hold that because appellant's complaint fails to state a valid cause of action, the district court did not err in dismissing appellant's suit on the pleadings.

Affirmed.

2-5-02
/s/ Daniel J. Foley

STATE OF MINNESOTA	**DISTRICT COURT**
COUNTY OF DAKOTA	**FIRST JUDICIAL DISTRICT**
Azam Ansari,	File No. C2-01-8186
Plaintiff,	
and	
Diamond Path Homeowners' Association and Robert B. Fine, Esq.	**ORDER DISMISSING CASE ON THE PLEADINGS**
Defendant.	(Filed Aug. 2, 2001)

The above-captioned matter came on for hearing before the Honorable Patrice Sutherland at the Dakota County Judicial Center on July 26, 2001 on Plaintiff's motion to compel discovery and Defendant's countermotion to dismiss on the pleadings.

Robert B. Fine, Esq., appeared on behalf of Defendants. Plaintiff appeared pro se.

Based on the file, records, and arguments of counsel, the Court makes the following:

ORDER

1. Defendants' motion to dismiss this action on the pleadings is hereby GRANTED.

Dated: July 27, 2001

BY THE COURT

/s/ Patrice K. Sutherland
Patrice K. Sutherland
Judge of District Court

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Azam Ansari,

Plaintiff,

and

Diamond Path Homeowners' Association and Robert B. Fine, Esq.

Defendant.

File No. C2-01-8186

ORDER DISMISSING CASE ON THE PLEADINGS

AND JUDGMENT

The above-captioned matter came on for hearing before the Honorable Patrice Sutherland at the Dakota County Judicial Center on July 26, 2001 on Plaintiff's motion to compel discovery and Defendant's countermotion to dismiss on the pleadings.

Robert B. Fine, Esq., appeared on behalf of Defendants. Plaintiff appeared pro se.

Based on the file, records, and arguments of counsel, the Court makes the following:

ORDER

1. Defendant's motion to dismiss this action on the pleadings is hereby GRANTED.

Dated: July 27, 2001

BY THE COURT

/s/ Patrice K. Sutherland
Patrice K. Sutherland
Judge of District Court

STATE OF MINNESOTA, COUNTY OF DAKOTA Certified to be a true and correct copy of the original on file and of record in my office this 2nd day of October, 2001

VAN A. BROSTROM, COURT ADMINISTRATOR

By /s/ Deborah McNaughton
DEPUTY

FILED DAKOTA COUNTY VAN A. BROSTROM, Court Administrator

Aug - 2 2001

By /s/ DCB
DEPUTY

JUDGMENT

I HEREBY CERTIFY THAT THE ABOVE ORDER CONSTITUTES THE JUDGMENT OF THIS COURT

VAN A. BROSTROM, COURT ADMINISTRATOR

By: /s/ Diane C. Bymark
DEPUTY

August 28, 2001

STATE OF MINNESOTA

IN SUPREME COURT

C3-01-1674

Azam Ansari,

Petitioner,

vs.

Diamond Path Homeowners' Association, et al.,

Respondents.

ORDER

(Filed Apr. 16, 2002)

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Azam Ansari for further review be, and the same is, denied.

Dated: April 16, 2002

BY THE COURT:

/s/ K A BLATZ
Kathleen A. Blatz
Chief Justice

15 U.S.C. § 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing –

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

* * *

---

15 U.S.C. § 1692e

False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

> **(1)** The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
>
> **(2)** The false representation of –
>
> **(A)** the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

* * *

Minn. § 515B3-107 UPKBEP OF COMMON INTEREST COMMUNITY.

(a) Except to the extent provided by the declaration, this subsection or section 515B3-113, the association is responsible for the maintenance, repair and replacement of the common elements, and each unit owner is responsible for the maintenance, repair and replacement of the unit owner's unit. Damage to the common elements or any unit as a result of the acts or omissions of a unit owner or the association is the responsibility of the person causing the damage, or whose agents or invitees caused the damage.

* * *

Robert B. Fine
Attorney at Law

4524-C Excelsior Boulevard
St. Louis Park, Minnesota 55416

(612) 929-1972

September 7, 2000

Azam Ansari
12954 Echo Lane
Apple Valley, Mn 55124

Re: Diamond Path

Dear Azam:

Please advised that I represent the above Association regarding outstanding Association fees in the amount of $1,151.25, consisting of $850.00 in dues and $301.25 in late fees which are due by you.

All outstanding dues, and other fees and expenses are a lien on your unit. Failure to pay that amount can result in an action resulting in the foreclosure of your unit.

The Board of Directors has authorized me to proceed towards foreclosure of your condominium unit to collect the outstanding balance. If I commence foreclosure, you will be responsible for all costs related to the foreclosure including recording and service fees and publication costs, as well as Sheriffs fees in conducting the sale.

In addition, you will be responsible for all reasonable attorneys fees incurred by the Association to foreclose.

The costs and attorneys fees will be substantial. I am writing you now to give you an opportunity to pay the balance due prior to commencement of foreclosure. The fees and expenses will only get larger and more substantial as the foreclosure proceeding continues. If you wish to

avoid these additional costs and expenses, you *must* make arrangements to pay the balance due.

Sincerely,

/s/ Robert B. Fine
Robert B. Fine

RBF/sl

THIS IS AN ATTEMPT TO COLLECT A DEBT. UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THE DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THE DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS FROM RECEIPT OF THIS, WE WILL OBTAIN VERIFICATION OF THE DEBT.

September 22, 2000

Robert B. Fine, Esquire
Attorney-At-Law
4524-C Excelsior Boulevard
St. Louis Park, MN 55416

RE: Diamond Path
Your Letter Dated September 7, 2000

Dear Mr. Fine:

I sincerely appreciated your addressing me by my first name. However, I did not appreciate the tone of the remaining contents. The following is my response.

- I dispute the validity of the debt, as I had twice in the Dakota County District Court in Hastings.
- The court rebuked your predecessor in this matter the first time, and the chief judge threw the case out of court the second time. The attorney then representing Diamond Path withdrew in May 2000.
- In the interim, there has been no good faith attempt by your client to address the basic issue of the conflict.
- I understand you are trying to do your job by posing threats but want you to know that I also have my rights and intend to defend them vigorously the third time.

Sincerely,

Azarn Ansari

AA/mlg

LIEN STATEMENT

NOTICE IS HEREBY GIVEN that Diamond Path Townhomes Association (hereinafter "Association"), a non-profit corporation under the laws of the State of Minnesota, with its address at c/o Robert B. Fine, Attorney at Law, 4524 Excelsior Boulevard, Unit C, Minneapolis, Minnesota 55416, claims and holds a lien upon the following described real estate:

> Lot 2, Block 3, Diamond Path Townhomes CIC no. 130, Dakota County, Minnesota;
>
> Subject to the provisions, restrictions, easements and covenants contained in said declaration and Bylaws;

for the sum of: $1,816.25, consisting of monthly assessments of $1,215, $601.25 in late fees, plus attorneys fees and any other assessments or other amounts due or which become owed subsequent to February 1, 2001.

That said amount is due and owing to said claimant for delinquent assessments and fees, plus attorneys fees, and costs of preparing this statement, all of which were approved and assessed by the Board of Directors of the Association in accordance with the Declaration and By-Laws of the Association, recorded on November 10, 1994, as amended, as provided therein and by the laws of the State of Minnesota.

That the name of the claimant is as set forth above, and the name of the person owing the above delinquent assessments is as follows; to-wit: Azam Ansari.

That the date of the first item of the claimant Association's common expenses which remains unpaid is March 1, 2001; and the date of the last item is updated on a

monthly basis as additional assessments become due. The most recent assessment listed is for the month of February 2001.

That a description of the premises to be charged with said lien, to the best of said claimant's ability to ascertain the same, is as given above.

That the name of the owner of said premises, as of the date of making this statement, according to the best information said claimant now has or is able to ascertain, is: Azam Ansari.

That notices may be served upon the lien or at: Board of Directors, Diamond Path Townhomes Association, c/o Robert B. Fine, Attorney at Law, 4524 Excelsior Boulevard, Suite C, Minneapolis, MN 55416.

A copy of this statement has been served or mailed to the owner and/or the owner's agent.

Dated this 22 day of February, 2001.

DIAMOND PATH
TOWNHOMES
ASSOCIATION

By: /s/ Richard W. Tuma
its President

STATE OF MINNESOTA)
) SS
COUNTY OF Hennepin)

Richard Tuma, being duly sworn on oath, says that he is the President of the Association which is the claimant in the within statement, that he has knowledge of the facts

stated in said statement by reason of the following facts, to-wit: he has routine access to the financial records of the Association, and has frequent conferences with the Association's Treasurer, who has supervisory authority over the accounts of monies disbursed and received by said Association; that he makes said statement at the instance of the Association claiming said line; and that the statement is true of his own knowledge.

This instrument was acknowledge before me this 22nd day of February, 2001, by Richard Tuma, as President of Diamond Path Townhomes Association.

/s/ Kathleen A. Sand
NOTARY PUBLIC

This instrument was drafted by:
Robert B. Fine, #29221
Attorney at Law
4524C Excelsior Boulevard
St. Louis Park, MN 55416

[SEAL]

KATHLEEN A SAND
NOTARY PUBLIC – MINNESOTA
HENNEPIN COUNTY

My Commission Expires Jan. 31, 2005

[SEAL]

STATE OF MINNESOTA
DISTRICT COURT, FIRST JUDICIAL DISTRICT

NOTICE OF CASE DISMISSAL

Title of Case DIAMOND PATH HOMEOWNERS VS AZAM ANSARI

File Number 19-C1-99-6931

Date March 24, 1999

To: Ralph Overholt
P O Box 5331
Hopkins, MN 55343-2331

Attorney for X Plaintiff ___ Defendant

Pursuant to Rule 104 of the Rules of Practice for District Courts, you are required to file a Certificate of Representation.

YOU HAVE FAILED TO FILE THE REQUESTED DOCUMENT. **THIS IS YOUR FINAL NOTICE.**

If the required document is not filed within 10 day of the date of this notice, the Court Administrator shall close the above file.

By the Court

/s/ Leslie M. Metzen
Leslie M. Metzen, Chief
Judge
First Judicial District

cc: First Judicial District
Central Assignment

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF DAKOTA **1ST JUDICIAL DISTRICT**

DIAMOND PATH HOME-OWNERS ASSOCIATION
against Creditor

GARNISHMENT OR LEVY EXEMPTION NOTICE AND NOTICE OF INTENT TO GARNISH OR LEVY EARNINGS AFTER TEN DAYS

DR AZAM ANSARI
12954 ECHO LANE
APPLE VALLEY MN 55124 Debtor

AMOUNT OWING $703.97

Garnishee

THE STATE OF MINNESOTA
TO THE ABOVE-NAMED DEBTOR

PLEASE TAKE NOTICE That a garnishment summons or levy may be served upon your employer or other third parties, without any further court proceedings or notice to you, ten days more from the date hereof. Some or all of your earnings are exempt from garnishment. If your earnings are garnished, your employer must show you how the amount that is garnished from your earnings was calculated. You have the right to request a hearing if you claim the garnishment is incorrect.

Your earnings are completely exempt from garnishment if you are now a recipient of relief based on need, if you have been a recipient of relief within the last six

months, or if you have been an inmate of a correctional institution in the last six months.

Relief based on need includes Aid to Families with Dependent Children: *AFDC*, AFDC-Emergency Assistance: *AFDC-EA*, Medical Assistance: *MA*, General Assistance Medical Care: *GAMC*, Emergency General Assistance: *EGA*, Work Readiness, Minnesota Supplemental Aid: *MSA*, MSA Emergency Assistance: *MSA-EA*, Supplemental Security Income: *SSI*, and Energy Assistance.

If you wish to claim an exemption, you should fill out the appropriate form below, sign it, and send it to the creditor's attorney and to the garnishee.

You may wish to contact the attorney for the creditor in order to arrange for a settlement of the debt or contact an attorney to advise you about exemptions or other rights. **SEE REVERSE SIDE FOR IMPORTANT NOTICE.**

PENALTIES

1. Be advised that even if you claim an exemption, a Garnishment Summons may still be served on your employer. If your earnings are Garnished after you claim an exemption, you may petition the court for a determination of your exemption. If the court finds that the Creditor disregarded your claim of exemption in bad faith, you will be entitled to costs, reasonable attorney fees, actual damages, and an amount not to exceed $100.00.

2. HOWEVER, BE WARNED, if you claim an exemption, the Creditor can also petition the court for a determination of your exemption, and if the Court finds that you claimed an exemption in bad faith, you will be assessed costs and

reasonable attorney's fees plus an amount not to exceed $100.00.

3. If after receipt of this notice, you, in bad faith, take action to frustrate the Garnishment, thus requiring the Creditor to petition the court to resolve the problem, you will be liable to the Creditor for costs and reasonable attorney's fee plus an amount not to exceed $100.00.

DEBTOR'S EXEMPTION CLAIM NOTICE

I hereby claim that my earnings are exempt from Garnishment, because:

1. I am presently a recipient of relief based on need. (Specify the program, case number, and county from which relief is being received.)

_____	_____	_____
PROGRAM	CASE NUMBER if known	COUNTY

2. I am not receiving relief based on need, but I have received relief based on need within the last six months. (Specify the program, case number and county from which relief has been received.)

_____	_____	_____
PROGRAM	CASE NUMBER if known	COUNTY

3. I have been an inmate of a Correctional Institution within the last six months. (Specify the Correctional Institution and location.)

_____	_____	_____
INSTITUTION	CITY/STATE	COUNTY

I hereby authorize any agency that has distributed relief to me or any Correctional Institution in which I was an inmate to disclose the above named Creditor or his Attorney only whether or not I am, or have been an inmate of a Correctional Institution or a recipient of relief based on need within the last six months. I have mailed or delivered a copy of this form to the Creditor or Creditor's Attorney, if represented by such.

/s/ Ralph J. Overholt
ATTORNEY FOR CREDITOR
Ralph J. Overholt, Attorney at Law
Post Office Box 5331
Hopkins, MN 55343
Phone (612) 930-3204
Attorney ID # 212404

_____
DEBTOR'S SIGNATURE

_____
ADDRESS

_____
CITY/STATE/ZIP

_____
TELEPHONE

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

ACKNOWLEDGEMENT

The Plaintiff acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to

the opposing party or parties pursuant to Minnesota statute section 549.21(2)

/s/ Ralph J. Overholt
Attorney for Plaintiff
Ralph J. Overholt, #212404
Post Office Box 5331
Hopkins, Minnesota 55343
(612) 930-3204

IMPORTANT NOTICE CONCERNING YOUR RIGHTS

The Fair Debt Collection Practices Act, requires attorneys engaged in consumer debt collection to send within five days of the initial communication with a consumer in connection with the collection of any debt this notice. The law states that the total amount due and the name of the creditor to whom the debt is owed be on this notice. Unless you notify this office within thirty days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within thirty days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within thirty days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt. Any information obtained will be used for that purpose.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Azam Ansari,

Plaintiff,

vs.

Diamond Path Homeowners Association and Robert B. Fine, Esq.

Co-Defendants.

Civil Court File No.:

COMPLAINT

Plaintiff, Azam Ansari, for its cause of action against the Co-Defendants, Diamond Path Homeowners Association ("Diamond Path") and Robert B. Fine, Esq., states and alleges:

1. That at all times relevant herein the Plaintiff has resided at 12954 Echo Lane, Apple Valley, MN 55124 and legally described as:

   Lot 2, Block 3, Diamond Path Townhomes CIC no. 130, Dakota County, Minnesota.

2. That at all times relevant herein the Plaintiff has been a member of Co-Defendant Diamond Path Homeowners Association, P.O. Box 5233, Hopkins, Minnesota 55343.

3. That Diamond Path retained Ralph J. Overholt, Esq., Attorney at Law, P.O. Box 5331, Hopkins, Minnesota 55343, in 1999 to initiate debt collection proceedings against Plaintiff for reason-based holding of few association dues. Mr. Overholt withdrew in May 2000.

4. That Diamond Path thereafter retained Co-Defendant, Robert B. Fine, Esq., Attorney at Law,

P.O. Box 24192, Edina, Minnesota 55424, in September of the year 2000 again to initiate debt collection proceedings against Plaintiff for said holding of association dues.

COUNT I – DECLARATORY JUDGMENT CONCERNING THE MAINTAINENCE OF PLAINTIFF'S & COMMON INTEREST LAWN

5. That Minnesota Statutes Chapter 555 provides that any property whose legal relations are affected by statute, may have such rights or status determined and may obtain a declaration of rights, status or legal relations thereunder.

6. That Diamond Path is required to maintain the Common Elements (lawn included) of the Planned Community pursuant to Minn.Stat. § 515B.3-107 and Diamond Path Townhomes Declaration Section 9.1.

7. That Plaintiff pays a monthly assessment for the said maintenance.

8. That the common interest lawn in front and immediately adjacent to the Plaintiff's unit has numerous large areas of dead and damaged grass (see Exhibit 1), which have not been resodded or seeded for more than four years. Photographic documentation of such damage was presented to the court at a previous hearing on February 19, 1999.

9. That the Plaintiff has notified Diamond Path, both verbally and on memo line of check, paid for dues and presented evidence to the Court at a previous hearing on February 19, 1999 (evidence can be found in the previous Court file No. C1-99-006279).

10. That Diamond Path never responded to these genuine complaint [sic] or took any action to rectify the

problem. Instead, Diamond Path has steadfastly ignored it.

11. That Diamond Path violated Minn. Stat. § 515B.3-107 and Diamond Path Townhomes Declaration Section 9.1 by failing to properly maintain the lawn in front and adjacent to Plaintiff's unit.

12. That despite Diamond Path's continued refusal to properly maintain the lawn, Plaintiff has continued to pay the association dues except those withheld to draw its attention.

13. That Plaintiff believes he is justified in withholding $320.00 in year 2000 to draw Diamond Path's attention for proper maintenance of the common interest property.

14. That Diamond Path's continued refusal to properly maintain the lawn despite its own Declaration Section 9.1 constitutes bad faith, which has caused the Plaintiff emotional distress manifesting in unhappiness.

15. That the Plaintiff's one form of happiness in life related to his town home is enjoying a well-maintained lawn from the front porch at the end of his day's or week's hard work.

COUNT II – VIOLATION OF THE FAIR DEBTS COLLECTION PRACTICES ACT 15 U.S.C. § 1692G(b)

16. The Plaintiff repeats and realleges paragraphs 1 through 15 of the Complaint as if set forth in their entirety herein and made a part of this Count II.

17. That on May 19, 1998, the Plaintiff was served with a Summons and Complaint seeking a Judgment in the amount of $650.00 [sic] [$703.97] for unpaid association dues. The undated Summons and Complaint was

signed by Ralph Overholt, Esq. who then represented Diamond Path.

18. That the said Summons and Complaint was not filed with the Court until March 10, 1999 after the Court had heard Plaintiff's Motion on February 19, 1999. The case was then assigned Court File No. C1-99-6931.

19. That Plaintiff received a letter on or about January 1999 from Ralph Overholt, Esq. on behalf of Diamond Path, which was titled:

> "GARNISHMENT OR LEVY EXEMPTION NOTICE AND NOTICE OF INTENT TO GARNISH OR LEVY EARNINGS AFTER TEN DAYS".

20. That neither Ralph Overholt, Esq. nor Diamond Path were entitled to garnish Plaintiff's wages at the time this letter was sent.

21. That Diamond Path failed to obtain a final determination or Judgment on this case and on March 24, 1999, their case was dismissed by Chief Judge Leslie M. Metzen because Ralph Overholt, Esq. failed to file a Certificate of Representation as required under Rule 104 of General Rules of Practice for the District Courts.

22. That neither Ralph Overholt, Esq. nor Diamond Path intended on collecting this debt based on their failure to continue and maintain the action in District Court despite additional 10 days notice reminder by Chief Judge Leslie M. Metzen of the District Court.

23. That on September 7, 2000, Plaintiff received a letter from Robert B. Fine, Esq., attorney at law, indicating that he represented Diamond Path concerning outstanding Association fees of $1,151.25, consisting of $850.00 in dues and $301.25 in late fees.

24. That on September 22, 2000, Plaintiff answered in a letter to Mr. Fine that he disputed the validity of the debt (see Exhibit 2).

25. That although Mr. Fine had not validated the debt described in the September 7, 2000 letter nor responded to Plaintiff's letter of September 22, 2000, Plaintiff received yet another letter from him dated March 2, 2001. Attached to the letter was a Lien Statement indicating that the Plaintiff now owed $1,816.25, consisting of monthly assessments of $1,215.00 and $601.25 in late fees.

26. That Mr. Fine sent the Plaintiff a copy of a form entitled, "POWER OF ATTORNEY TO FORECLOSE LIEN".

27. That Mr. Fine and Diamond Path violated the Fair Debt Collection Act by continuing to pursue the collection of a debt without validating the debt even after receiving a written request from the alleged Debtor.

28. That Diamond Path and Mr. Fine have engaged in a pattern of debt collection practices that violate the Fair Debt Collection Act 15 U.S.C. § 1692k(a)(2)(A).

29. That Diamond Path and Mr. Fine's conduct has been reckless and in bad faith.

30. That such conduct has ignored Plaintiff's rights.

31. That the Plaintiff has expended considerable time and money to contest such conduct.

32. That as a result of violation of Fair Debt Collection Act 15 U.S.C. § 1692k(a)(2)(A), Diamond Path and Mr. Fine have caused the Plaintiff harassment and emotional distress including but not limited to fear, apprehension, anxiety, insomnia, and threatened loss of his town home.

COUNT III – DECLARATORY JUDGMENT CONCERNING THE LIEN NOTICE

33. The Plaintiff repeats and realleges paragraphs 1 through 32 of the Complaint as if set forth in their entirety herein and made a part of this Count III.

34. That Minnesota Statutes Chapter 555 provides that any property whose legal relations are affected by statute, may have such rights or status determined and may obtain a declaration of rights, status or legal relations thereunder.

35. That in response to the March 2, 2001 letter from Mr. Fine, Plaintiff filed a Motion in District Court to contest the lien and the amount of lien.

36. That at the Motion hearing on March 26, 2001, before the Honorable Richard G. Spicer at the Dakota County Judicial Center, Mr. Fine submitted an unsigned and unnotarized Affidavit stating that "the amount listed on the lien statement is for unpaid assessments in March, September and October of 2000 and underpayments in five of the last twelve months."

37. That the Plaintiff also received an unsigned letter from Co-Defendant Diamond Path on April 5, 2001 reminding him of its bylaws. Diamond Path did not send a copy of this letter to Co-Defendant, Mr. Fine.

38. That the Plaintiff received Notice of Pending Foreclosure from Co-Defendants on or about May 14, 2001, again without validating the debt, even after receiving a written request from the alleged debtor.

39. That the Plaintiff withheld the monthly assessments due in March, September and November 2000 because of the further worsening conditions of the common lawn including his portion. Plaintiff did pay dues for October 2000 contrary to the statement in

the unsigned affidavit. Plaintiff underpaid the assessments due in January 2000 by five dollars ($5.00) because Diamond Path did not notify of the increase in dues ($100.00-105.00) until February 2000. This results in an unpaid balance of $320.00 for the year 2000. The Plaintiff has made all monthly assessment payments for the year 2001.

40. That neither Mr. Fine nor Diamond Path have submitted any simple, itemized, and dated financial documentation confirming the accuracy of the amount claimed in the previous Lien Statements, which contradicts sharply the statement made in Mr. Fine's unsigned and unnotarized affidavit referred to in paragraph 36.

41. That the Plaintiff believes he is justified in his reason-based withholding of three out of sixteen monthly assessments because of continuous and deliberately ignoring proper maintenance of his and common interest lawn. In the event the Court feels that the Plaintiff was not justified in his reason-based withholding of the three monthly assessments of the year 2000, the Plaintiff owes only $320.00. Plaintiff has no objection to placing this amount in a court-supervised escrow account until Co-Defendants meet their legal obligation to the satisfaction of the Court and the Plaintiff.

WHEREFORE, the Plaintiff seeks the following relief requesting the Court to:

1. On Count I, Declaring the Co-Defendant, Diamond Path, failed to maintain the Plaintiff's and common interest lawn as required pursuant to Minn.Stat. § 515B.3-107 and Diamond Path Townhomes Declaration Section 9.1.

2. On Count I, Declaring that the Plaintiff was justified in withholding $320.00 because of Co-

Defendant's continued failure to maintain his and the common interest lawn as required by the obligatory mandates referred to above para 1.

3. On Count II, Declaring that Co-Defendants have violated the Fair Debt Collection Act by continuing to pursue the collection of a debt without validating the debt even after receiving a written response from the Plaintiff and continuing to change their stance regarding actual debt as recently as March 26, 2001.

4. On Count II, declaring the Co-Defendants have caused the Plaintiff emotional distress by violating Minn.Stat. § 515B.3-107 and 15 U.S.C. § 1692k(a)(2)(A).

5. On Count II, Ordering Judgement against each Co-Defendant and awarding the Plaintiff $2,000.00 to compensate for the emotional distress suffered by the Plaintiff as a result of the Co-Defendant's violation of Minn.Stat. § 515B.3-107 and the Fair Debt Collection Act 15 U.S.C. § 1692k(a)(2)(A).

6. On Count II, Ordering Civil Liability Judgment against each Co-Defendant and awarding the Plaintiff $1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A).

7. On Count III, ordering temporary injunction of Plaintiff's unit foreclosure under Federal Rule 65.02(3), modified to reflect State Practice under M.S.A. 585.03. and 585.04.

8. Ordering the Co-Defendants to pay reasonable costs, disbursements and attorney's fee (currently at more than $2,500.00 and escalating) incurred by the Plaintiff in the above-entitled matter.

9. On Count III, if the Court determines that Plaintiff was not justified in his reason-based withholding of the three monthly assessments for the year 2000, Plaintiff has no objection to placing $320.00 in a court-supervised escrow account until Defendants meet their legal obligations to the satisfaction of the Court and the Plaintiff.

10. Ordering the Co-Defendants to pay all out-of-pocket expenses incurred by the Plaintiff in the above-entitled matter.

11. Ordering such other and further relief as is just and equitable under the circumstances of the above-entitled matter.

Dated: 5-6-, 2001

By: /s/ Azam Ansari
Azam Ansari, Pro Se
12954 Echo Lane
Apple Valley, MN
55124

ACKNOWLEDGEMENT

The undersigned acknowledges that fees and sanctions may be imposed on any party asserting a claim or defense in bad faith, for the purpose of delay or harassment, pursuant to Minn. Stat. § 549.211.

/s/ Azam Ansari
Azam Ansari, Pro Se

EXHIBIT 1

DIAMOND PATH LAWN AS OF THE WEEK OF 5/10 TO 5/15/2001



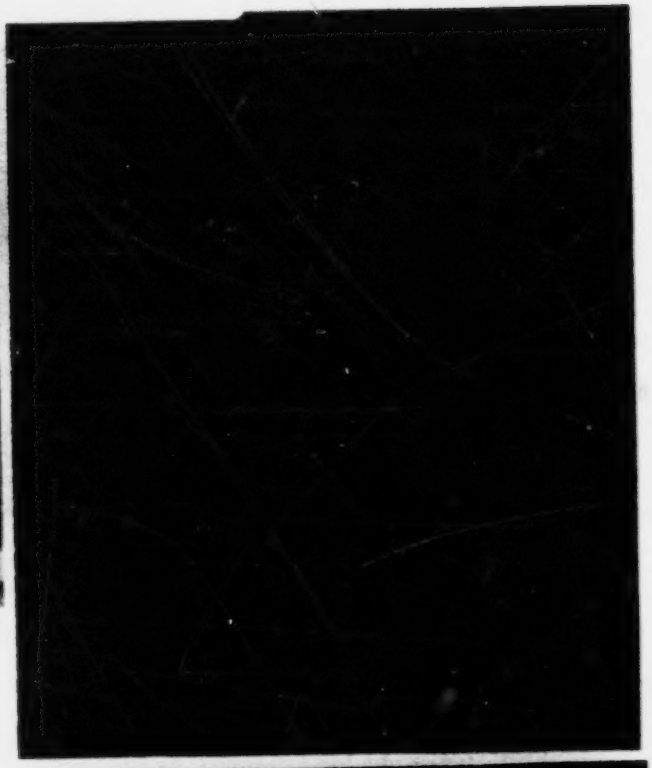


EXHIBIT 1





EXHIBIT 2

September 22, 2000

Robert B. Fine, Esquire
Attorney-At-Law
4524-C Excelsior Boulevard
St. Louis Park, MN 55416

RE: Diamond Path
Your Letter Dated September 7, 2000

Dear Mr. Fine:

I sincerely appreciated your addressing me by my first name. However, I did not appreciate the tone of the remaining contents. The following is my response.

- I dispute the validity of the debt, as I had twice in the Dakota County District Court in Hastings.
- The court rebuked your predecessor in this matter the first time, and the chief judge threw the case out of court the second time. The attorney then representing Diamond Path withdrew in May 2000.
- In the interim, there has been no good faith attempt by your client to address the basic issue of the conflict.
- I understand you are trying to do your job by posing threats but want you to know that I also have my rights and intend to defend them vigorously the third time.

Sincerely,

Azam Ansari

AA/mlg

State of Minnesota
County of Dakota

District Court
First Judicial District

Azam Ansari

Plaintiff

Vs

Answer

Diamond Path Homeowners
Association &
Robert B. Fine Esq.,

Defendant

Court File No.

COMES NOW the Defendants and for their Answer to Plaintiff's Complaint, state and allege as follows:

1. Denies each and every allegation of said Complaint except as hereinafter stated, qualified or admitted.

2. That any pretended claim of Plaintiff against Robert B. Fine was at a time when said individual defendant was representing Defendant Diamond Path Townhomes Association, a Minnesota non-profit corporation, hereinafter "Association".

3. Said Defendant Robert B. Fine is not a proper party, should not be a defendant and was named to harass and intimidate and to cause the incurring of additional attorneys fees. Pursuant to the Rules of Civil Procedure and Minnesota Statutes Defendants are entitled to attorney fees from Plaintiff for the time and expense incurred.

4. Admit Paragraphs 1 and 2 of the Complaint.

5. Admit paragraph 4 only to the extent that the Association retained its attorney to foreclose on the

affected unit. Further the attorney retained in paragraph 3 of the Complaint was done so by a collection firm, which matter has been concluded as provided in court orders.

6. As and for paragraphs 5 through 15 of the Complaint, said allegation [sic] are merely brought as a defense to a proceeding to foreclose on Plaintiff's unit as evidenced by a Notice of Pendency to Foreclose, recorded and served on the Plaintiff, and Plaintiff has failed to make payment as he admits and believes he can withhold payment and incur costs to the Association because of maintenance questions.

7. Plaintiff has never made it known to the Association in writing or orally of any of said matters, nor do the fact [sic] he had made any notification would justify his non-payment of Association dues, interest, penalties and costs.

8. Further this is not a proper forum in which to resolve maintenance issues, which affect the Association, and that at the least, he should have brought this matter before the Board, and if he was not satisfied the method of proceeding would be to contest the sitting Board at the time they are elected.

9. Specifically deny paragraphs 16 through 32, except Defendants admit an action was filed but has been dismissed, that Plaintiff made a motion in said proceeding for relief which was denied, and instead of appealing that Order has elected to bring a separate action.

10. Denies paragraph [sic] 32 through 41 and puts Plaintiff to his strict proof thereof. Further, Plaintiff cites general statutes without directing specific application and

admits failing to make proper payments, including for a claim that Plaintiff believes the Association did not maintain property it owns.

11. That the Complaint fails to state a cause of action upon which relief may be granted.

12. The Summons fails to include required language and is invalid.

13. That Plaintiff admits failing to make payments when due. There is no legal justification for withholding dues, which is not rent. A Lien Statement was filed by the Association with Dakota County on March 27, 2001 as document no. 1760241, which was served upon Plaintiff. On May 11, 2001 a Notice of Pendency to Foreclose Lien was served and then filed with the County Recorder, and Plaintiff continues to accrue interest, penalties, costs and attorneys fees in the foreclosure action.

14. Plaintiff has pursued this matter to harass the Defendant and to cause unnecessary delay, while the Association continues to incur attorneys fees and court costs therein.

15. Defendants are entitled to a Judgment on the Pleadings, as Plaintiff has no valid cause of action.

WHEREFORE, Defendants demand judgment against the Plaintiff as follows:

1. Dismissing Plaintiffs cause of action against Defendant Robert B. Fine with prejudice.

2. Awarding reasonable attorneys fees to Defendant Robert B. Fine.

3. Dismissing with prejudice Plaintiff's pretended cause of action against the Defendant Association.

4. Awarding to Defendant Association it's [sic] reasonable attorneys fees.

5. For such other relief as is just and equitable.

Dated: 6/1/1

/s/ Robert B. Fine
Robert B. Fine, #29221
Attorney for Defendants
P.O. Box 24192
Edina, MN 55424-0192
(612) 532-8042

ACKNOWLEDGEMENT

Plaintiff acknowledges compliance with Minn. Stat. sec 549.21, subd. 1, that costs, disbursements and reasonable attorney and witness fees may be awarded to an opposing party pursuant to Minn. Stat. sec. 549.21, subd. 2.

Dated: 6/1/1

/s/ Robert B. Fine
Robert B. Fine, Attorney

July 19, 2001

Robert B. Fine, Esq.
Attorney At Law
P.O. Box 24192
Edina, MN 55424-0192

RE: Azam Ansari vs
Diamond Path and Robert B. Fine, Esq.

Dear Mr. Fine:

Enclosed herewith and served upon you by U.S. Mail you will find Plaintiff's response to the Defendants' First Set of Interrogatories received on June 21, 2001, in the above-entitled matter. A few supplemental documents, which are on request, will be provided as they become available.

Please also note as a courtesy remainder that you have failed to respond to my letters of July 6 and July 9, 2001. Therefore, I had no choice but to move the Court for a July 26th hearing.

Sincerely,

Azam Ansari

AA/mlg

June 29, 2001

Robert B. Fine, Esq.
P.O. Box 24192
Edina, MN 55424-0192

RE: Azam Ansari vs Diamond Path

Dear Mr. Fine:

Enclosed herewith and served upon you by U.S. Mail you will find Plaintiff's first set of interrogatories and first request for production of documents in the above-entitled matter.

Please note you have thirty (30) days from date of service for answering interrogatories and signing before a notary and producing requested documents to the Plaintiff.

Sincerely,

Azam Ansari
Plaintiff

AA/mlg

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Azam Ansari

Plaintiff

Vs

Diamond Path Homeowners Association and Robert B. Fine Esquire

Defendant

File No. C2-01-8186
C.A. File No. C8-01-1332

MOTION HEARING

The above-entitled matter came on for hearing before Patrice Sutherland, Judge of District Court, at the Dakota County Judicial Center, Hastings, Minnesota on July 27, 2001.

APPEARANCES

Azam Ansari appeared pro se.

Robert B. Fine, Attorney at Law, PO Box 24192, Minneapolis, Minnesota 55424-0192, appeared on behalf of the Defendants.

[2] THE COURT: Okay. Next is Azam Ansari versus Diamond Path Homeowner's Association and Robert Fine, Esquire.

Do we have both sides here on that matter?

MR. FINE: Yes, Your Honor.

MR. ANSARI: Yes, Your Honor.

THE COURT: Okay. Why don't you be seated. Okay. Why don't you note your appearances, state your name for the record?

MR. ANSARI: I'm the plaintiff in this case. Name is Azam – A-z-a-m. Last name is Ansari, A-n-s-a-r-i.

MR. FINE: Your Honor, Robert Fine representing Diamond Homeowner's Association and also representing myself.

THE COURT: Okay. And I believe, Mr. Ansari, this is your original motion. Perhaps to reduce the length of the arguments I'm going to tell you right now I'm dismissing Mr. Fine as a defendant.

So why don't you move on to your other issues today.

MR. ANSARI: Your Honor, I would like to promptly request a reconsideration because Mr. Fine has been the one who has been violating the fair debt collection act and has refused to give the verification [3] of the debt, which has been in dispute, and this has been a – requested by me twice. And also I feel that there is material fact of issues which should be left to a jury to decide, and I have requested a jury trial for this matter.

THE COURT: Haven't you acknowledged in your own pleadings that you owe the money?

MR. ANSARI: Yes, I do. But that is not what the defendants are saying that I owe them. The amount is significantly different, and that's where the dispute is. And the dispute has not been dispute – disputed amount has not been verified by the defendants, despite the fact that I asked them. And the law clearly states that when somebody dispute[s] the amount, it need[s] to be verified and

also it need[s] to be supplied to the consumer. This has not been done. I – I –

THE COURT: What amount do you think you owe?

MR. ANSARI: I – I have – I have missed about three months of payments.

THE COURT: So what do you think you owe? So what do you think you owe?

MR. ANSARI: Three hundred twenty-five dollars.

THE COURT: Okay. What do they claim you owe?

[4] MR. ANSARI: They are claiming, as of last – in the public notice for the lien closure, close to $1988.00.

THE COURT: Okay. Proceed.

MR. ANSARI: And regarding my motion, Your Honor, I just need to know. Do you have any time limits so that I don't go over that limit?

THE COURT: Well, normally, we would contemplate 20 minutes for each hearing on the special term calendar. So why don't you assume you have half that amount.

MR. ANSARI: Okay. Thank you very much. Your Honor, I would like to draw the attention of the court to the affidavit, as well as the motion that I have submitted, in – in order to conserve time. And I want to emphasize to the court is that I have all – in good effort and in best judgment I have tried to avert this motion this morning,

but I did not have any recourse left because of the defendant's attitude. And I have submitted the evidence to the court.

I also want to emphasize to the court is that I'm not just misusing or abusing the court system. I'm looking for an impartial, fair, and just resolution of the matter. And the first thing that I'm seeking in my motion is the discovery problems that we have. And I

* * *

[11] THE COURT: Okay. Well, at some point one will be issued, and you'll probably have a trial date next year, so these are probably consistent with the time frames that will be established by Central Assignment in that scheduling order.

MR. ANSARI: There has been no scheduling order, Your Honor.

THE COURT: I understand that. But one will be issued by Central Assignment. And that will tell you when your trial is, that will tell you when discovery has to be completed, will tell you when all motions have to be heard and served prior to that trial date. That's the normal process in a civil case.

MR. ANSARI: Then the other problem I have, Your Honor, is the informational statement that I had to submit according to the Minnesota Rule 111.2. I have submitted evidence to the court that I tried to secure the cooperation of the defendant and Mr. Fine, but failed. I – I wrote letters. I wrote letters and I reminded him, and his response was not at all. And to the point, he accused me saying I failed to meet with him. There was no date set about that. I requested. –

THE COURT: Okay. But who's complaining? Have you been sanctioned? Did you get a $50.00

* * *

[19] but it has nothing to do with your complaints regarding lawn maintenance.

MR. ANSARI: Yes. That's what I'm calling to, Your Honor. I have verbally talked to Kathleen Sand, the manager of the Personal Touch Management Company which manages the town home association. For several times in 1996, 1997 I wrote on the checks that I submitted for the association dues that lawn needs care, please. And I have done that this year also. And there has been no response.

The association bylaws indicate that we need to notify the Personal Touch Management Company. It doesn't tell that you have to go to the board of directors, and the board of directors come into play only when there has been some damage that they would contact the owner of the town homes and ask him to be present at the conference. So it is – it is not true that they were not notified. They have been notified. The attorneys have seen the exhibits that I have submitted of the lawn before and now. And how is it possible that that would not be communicated to the Personal Touch Management Company?

I believe there is material issue of fact here and it's the jury to decide, and I have requested [sic] [to] have a jury trial, and that's what I would submit.

[20] Finally, I would submit that my motion was submitted properly. It had the required five days, according to the Minnesota Rule 601, whereas the defendant's motion came in three days before this motion. And I

believe it should be dismissed because of improper service and I should be given a continuation date so that I can present this properly. I had one night over which I had to prepare the response.

And in previous matter, the same thing has happened. And the court has ruled that you have to have five days, not counting Saturday, Sundays, according to the Minnesota Rules 601. So I believe the service was improper and I think any kind of action on that will be injust.

THE COURT: Okay.

MR. ANSARI: Finally, I would like to request the cost of the attorney – attorneys, as well as cost of the court costs and also any out-of-pocket expense in this matter.

THE COURT: Okay. I will take the matter under advisement and issue an order.

MR. FINE: Quick thing, Your Honor.

THE COURT: Sure.

* * *

[22] **CERTIFICATE OF REPORTER**

I, Peggy J. Etchison, District Court Reporter in and for the First Judicial District, do hereby certify that the foregoing 22 pages are a true and correct transcript of my stenographic notes in the proceedings held before Patrice Sutherland, Judge of District Court, at the Dakota County Judicial Center, Hastings, Minnesota.

Dated this 7th day of September 2001.

/s/ P. J. Etchison
PEGGY J. ETCHISON,
CP-SCR
District Court Reporter
Dakota County Judicial
Center
1560 West Highway 55,
Chambers 104
Hastings, Minnesota 55033

SHERIFF'S CERTIFICATE OF SALE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I Don Gudmundson, Sheriff of Dakota County, State of Minnesota, do hereby certify: That pursuant to (i) the printed Notice of Lien Foreclosure dated July 3, 2001, which was caused to be published by the Diamond Path Townhomes Association, a Minnesota non-profit corporation, for six consecutive weeks beginning July 19, 2001, in the Dakota County legal publication, Dakota County Tribune, in order to foreclose its lien upon the property described below; (ii) the power of sale and remedies granted by the owners of said property in taking title to the premises subject to the Declaration of the Diamond Path Townhomes, filed for record in the office of the Dakota County Recorder on November 10, 1994, as document no. 1250147 and also subject to Minn. Stat. § 515A.3-115 governing condominium; and (iii) that certain lien statement dated February 22, 2001, in favor of Diamond Path Townhomes Association, as lienor, filed for record in the office of the Dakota County Recorder on March 27, 2001, as document no. 1760241; I DID, at the time and place in said published notice specified, to-wit: at the Dakota County Sheriff's Office at Lobby S-100 of the Dakota County Law Enforcement Center, at 1580 Highway 55, Hastings, Minnesota, on the 30th day of August, 2001, at 10:00 o'clock a.m., offer for sale and sell at public auction to the highest bidder, for cash, the tract of land lying and being in the County of Dakota, State of Minnesota, described as follows, to-wit:

Lot 2, Block 3, Diamond Path Townhomes, CIC no. 130, Dakota County, Minnesota.

and did strike off and sell the same to Diamond Path Townhomes Association, for the sum of Ten Thousand, Three Hundred, Sixty-One and 23/100 ($10,361.23) Dollars, said purchaser being the highest bidder and said sum being the highest and best bid offered therefor; and that said sale was in all respects openly, honestly, fairly and lawfully conducted, and the said time allowed by law for redemption by the owner, its assigns or representatives, is six months from the date of said sale.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 30 day of August, 2001.

In Presence Of:

Don Gudmundson

As Sheriff of Dakota County, Minnesota

By: /s/_____
Deputy

_____

_____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this 30 day of August, 2001, before me personally appeared _____, to me known to be the Deputy Sheriff of said County, and the person described in and who executed the foregoing instrument and acknowledged that he executed the same as hi [sic] free act and deed as such Deputy Sheriff.

/s/_____
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Robert B. Fine, Attorney #29221
P. O. Box 24192
Edina, MN 55424-0192
(612) 532-8042

Diamond Path

Homeowners Association

Rules and Regulations

Abridged

* * *

Insurance

Insurance on the Common Properties are covered under one Master Group policy that commences [sic] June. Insurance is included in the monthly assessment. Each homeowner will be issued a Certificate of Insurance by the insurance agent. The agent at the time of this publication is:

John Anderson State Farm Insurance 561-2970

Homeowners need to insure the interior contents of their units. Homeowners should discuss their specific insurance needs with their agent and, if necessary, the association's agent. Homeowners should report any damage to common grounds or building exterior to the property manager as soon as possible.

Common Grounds and Building Exteriors

The association is responsible for the maintenance of the common property and building exteriors. The association contracts for grounds maintenance services, which includes care of the lawn and snow removal, and for trash removal. Damages caused by the contractors and their employees are the responsibility of the contractor. These damages should be reported immediately to Personal Touch Management Company. Damages caused by vandalism should be reported immediately to the Apple Valley

Police Department. Damages caused by residents or their guests will be the responsibility of the homeowner.

Reward Program

The association maintains a reward program offering up to $500 for information leading to the arrest and conviction of anyone responsible for vandalizing association property. All information provided will be treated in a confidential manner. Informants should call the Apple Valley Police Department, and then Personal Touch Management Company at 544-1647 for reward.

Changes to the Common Property and Building Exteriors

Any changes, additions or deletions to the exterior of your unit or to the common grounds must be approved by the Board of Directors or a designated Architectural Control Committee prior to beginning the project. (See Article VIII of the Declaration for details.) The guidelines and procedures that must be followed in seeking approval for any changes, additions, or deletions are described in this manual.

Exterior Lighting

Maintenance and replacement of the garage and entry fixtures and bulbs is the responsibility of the homeowner.

Fireplace

Homeowners are responsible for fireplace chimney cleaning.

Rubbish Removal

At this time rubbish pickup is Friday. The rubbish contractor requires that rubbish be put in designated containers at curbside. Rubbish must be put out no earlier than 6 p.m. the evening before pickup day, and garbage cans must be returned to the garage the same evening after pickup. If you have an unusual amount of rubbish or non-household rubbish to be picked up, please call Personal Touch Management

* * *

COMMON INTEREST COMMUNITY NUMBER 130
(Planned Community)

DIAMOND PATH TOWNHOMES

DECLARATION

This Declaration is made in the County of Dakota, State of Minnesota, on this 3rd day of November, 1994, by Gardner Bros. Const., Inc., a Minnesota corporation (the "Declarant"), pursuant to the provisions of Minnesota Statutes Chapter 515B, known as the Minnesota Common Interest Ownership Act (the "Act"), for the purposes of creating Diamond Path Townhomes, a planned community.

WHEREAS, Declarant is the owner of certain real property located in Dakota County, Minnesota, legally described in *Exhibit A* attached hereto and Declarant desires to submit said real property and all improvements thereon (collectively the "Property") to the Act, and,

WHEREAS, Declarant desires to establish on the Property, a plan for a permanent residential community to be owned, occupied and operated for the use, health, safety

and welfare of its resident Owners and Occupants, and for the purpose of preserving the value, the structural quality, and the original architectural and aesthetic character, of the Property, and

WHEREAS, the Property is not subject to an ordinance referred to in Section 515B.1-106 of the Act, governing conversions to common interest ownership, and is not subject to a master association as defined in the Act.

THEREFORE, Declarant makes the Declaration and submits the Property to the Act as a planned community under the name "Diamond Path Townhomes," initially consisting of the Units referred to in Section 2, declaring that this Declaration shall constitute covenants to run with the Property, and that the Property shall be owned, used occupied and conveyed subject to the covenants, restrictions, easements, charges, and liens set forth herein, all of which shall be binding upon all Persons owning or acquiring any right, title or interest herein, and their heirs, personal representatives, successors and assigns.

* * *

a. Detailed plans, specifications and related information regarding any proposed alteration, in form and content acceptable to the Board of Directors, shall be submitted to the Board of Directors at least sixty (60) days prior to the projected commencement of construction. No alterations shall be commenced prior to approval.

b. The Board of Directors shall give the Owner written notice of approval or disapproval. If the Board of Directors fails to approve or disapprove within sixty (60) days after receipt of said plans and specifications and all other

information requested by the Board of Directors, then approval will not be required, and this Section shall be deemed to have been fully complied with so long as the alterations are done in accordance with the plans, specifications and related information which were submitted.

c. If no request for approval is submitted, approval is denied, unless (i) the alterations are reasonably visible and (ii) no written notice of the violation has been given to the Owner in whose Unit the alterations are made, by the Association or another Owner, within six months following the date of completion of the alterations. Notice may be direct written notice or the commencement of legal action by the Association or an Owner. The Owner of the Unit in which the alterations are made shall have the burden of proof, by clear and convincing evidence, that the alterations were completed and reasonably visible for at least six months following completion and that the notice was not given.

8.3 Remedies for Violation. The Association may undertake any measures, legal or administrative, to enforce compliance with this Section and shall be entitled to recover from the Owner causing or permitting the violation [sic] all attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs of enforcement, whether or not a legal action is started. Such attorneys' fees and costs shall be a lien against the Owner's Unit and a personal obligation of the Owner. In addition, the Association shall have the right to enter the Owner's Unit and to restore any part of the Dwelling or Unit to its prior condition if any alterations were made in violation of this Section, and the cost of such restoration shall be a personal obligation of the Owner and a lien against the Owner's Unit:

SECTION 9.

MAINTENANCE

9.1 Maintenance by Association. The Association shall provide for all maintenance, repair or replacement (collectively referred to as "maintenance") of the Common Elements. In addition, for the purpose of preserving the architectural character, quality, and uniform and high standards for appearance of the Property, the Association shall (i) provide for exterior maintenance upon the Dwelling in each Unit that is subject to assessment as follows: paint and replace roofs, gutters, downspouts, decks, garage doors (except hardware), and exterior siding and other building surfaces, and (ii) provide for lawn, shrub and tree maintenance on all Units, except for watering. The Association's obligation to maintain exterior building surfaces shall exclude patios, entry doors, door hardware, air conditioning equipment, glass and window

* * *

State of Minnesota
County of Dakota

District Court
First Judicial District

Azam Ansari
12954 Echo Lane
Apple Valley, MN 55124

Plaintiff

Vs

Diamond Path Homeowners Association
& Robert B. Fine Esq.
P.O. Box 24192
Edina, MN 55424-012

Defendant

Civil
Court File No.
19-C2-01-8186
Affidavit of
Bonnie Lammers

Bonnie Lammers duly sworn states as follows:

1. She is licensed Realtor in the State of Minnesota for over thirty (30) years.
2. She represented plaintiff in the purchase of a townhouse. *Purchase* agreement dated May 12, 1995. *Builder/Seller* – Gardner Brothers Construction Inc. Jeffery Allen Gardner the President. *Legal description* – Lot 2, Block 3, Common Interest Community number 130, Diamond Path Townhouse, Dakota County, Minnesota, according to the recorded plat thereof. *Address* – 12954 Echo Lane, Apple Valley MN 55124 in the county of Dakota. *Closing date* – June 5, 1995.
3. She has been called by plaintiff about maintenance of badly damaged lawn, has seen where no effort was made to repair or replace damaged lawn. (since 1997 to present)

Further your affiant sayth not.

[SEAL] **JACKIE L. WILLIAMS**
NOTARY PUBLIC MINNESOTA
MY COMMISSION EXPIRES
1-31-2005

/s/ Jackie Williams 7/13/01

Respectively

/s/ Bonnie Lammers
Bonnie Lammers
Realtor
Coldwell Banker Burnett
1875 Plaza Drive
Eagan, MN 55122

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF DAKOTA FIRST JUDICIAL DISTRICT

Diamond Path Homeowner Association,

Plaintiff,

vs. AFFIDAVIT OF ATTORNEY

Azam Ansari, (Filed Mar. 22, 2001)

Defendant.

Court File No. 19-C1-99-006279

STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

Robert B. Fine, being duly sworn upon oath states as follows:

1. That he is the attorney for Diamond Path Townhomes Association, a Minnesota non-profit corporation, to foreclose a lien the association has for outstanding dues and late fees, by Power of Attorney dated February 22, 2001, attached hereto. Your affiant makes this affidavit and special appearance not to admit proper service in this action, but to object to the motion and request attorneys fees. Attorneys fees are part of the foreclosure process.

2. Attached is a copy of a letter sent to Azam Ansari dated September 7, 2000, which complies with the federal fair debt collection practices act, and for which said party made no response within 30 days.

3. Your affiant was not the attorney of record in this action which was evidently dismissed on March 24, 1999.

Further, your affiant was served by mail on the papers in this motion which were received March 9, 2001, but they were not served on the Defendant or its attorney in this action.

4. It is improper to bring a motion on subsequent matters in a dismissed case and further, the motion is dispositive, lacks proper notice and bring up new causes of action, which must be made part of a separate action. This foreclosure is based on dues since 2000 and late fees which are substantial and show failure to make payment for March, September and October of 2000 and underpayments in five of the last twelve months.

5. Said defendant has brought this improper motion to harass and has caused the defendant to incur needless attorneys fees to respond and appear in the sum of $750, and requests the court to order the defendant to pay said fees. If the defendant seeks to prevent a lien foreclosure, this is not a proper action.

Dated: 3/21/01

/s/ Robert B. Fine
Robert B. Fine, #29221

Subscribed & sworn before me
this 21st day of March, 2001.

/s/ Renae Boegeman
NOTARY PUBLIC

[SEAL]
RENAE BOEGEMAN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

C3-01-1674

State of Minnesota

IN COURT OF APPEALS

AZAM ANSARI,

Appellant,

vs.

DIAMOND PATH HOMEOWNERS' ASSOCIATION AND ROBERT B. FINE, ESQ.,

Respondents.

APPELLANT'S INFORMAL BRIEF AND APPENDIX

* * *

V. THE APPELLANT'S EVIDENCE UNDER FDCPA AS TO WHY HE HAS DISPUTED THE DEBT OR ANY PORTION THEREOF AND WHY THE RESPONDENTS HAVE DEFAULTED IN ITS FORTHRIGHT VERIFICATION TO DATE.

In the year 2000, the Respondents' assessment dues were $105 per month. In the year 2001, the dues increased to $110 per month. Because of the Respondents' misrepresentation, lack of service "primarily for personal, family and household purposes," persistent multiple defaults of their By-laws and Declaration 9.1, and violation of MCIOA . . . ; the Appellant withheld three assessment dues payments (one withholding per default – total *$320.00*) in 2000 . . . to draw their attention to their obligations under FDCPA and MCIOA, the latter a law in the state where

they conduct their business (emphasis added). He paid all other assessment dues owed for 2000 and all assessment dues owed for 2001 to date . . .

"A 'debt,' as defined by the FDCPA is (1) an obligation or alleged obligation of the consumer to pay money (2) arising out of transaction to which (3) the money, property, insurance or services which are in subjection of the transaction are primarily for the personal, family and household purposes" (*see* 15 U.S.C. § 1692a(5)).

The Respondents state in their lien statement, filed at the County Recorder's office, that the debt of assessment dues (excluding late fees etc.) owed by the Appellant, is *$1,215* . . . (emphasis added). The Respondents' assessment dues debt in September 2000 stood at $850.00 and by March 2001, it escalated to $1,215.00 – an addition of another $365.00. The Appellant, during that interim period (October 2000 to March 2001), withheld only one month's dues (November of $105.00. . . . The resulting balance of $260.00 remains unaccounted for and needs verification.

The Appellant's and the Respondents' figures simply do not match. The significant wide difference between the projected assessment dues debt ($1,215.00 v. $320.00) has never been legitimately verified by the Respondents despite the Appellant's timely notice that he disputed the validity of the debt. The Court also failed to probe and scrutinize. The Appellant alleges that the Respondents have carried over their previously contested debt (they tried to garnish and levy the Appellant's wages) regarding which a court hearing took place on February 19, 1999. The Court promised a ruling, but withheld it pending another hearing, which never took place despite the

Appellant's following of the Court's instructions. On an iatrogenic technicality, unjustly created by the Court on May 3, 1999, the Appellant's previous hearing was not given any ruling stating that the Respondents' claim against the Appellant was already dismissed by the Chief Judge on March 24, 1999 for which no notice was provided by the Court until the July 9, 1999 . . .

The amount of assessment dues as claimed by the Diamond Path Homeowners' Association (DPHA) and its previous attorney, Mr. Overholt, at 1999 hearing was very close to the currently projected difference ($1,215 - $320 = $895). The Respondents, in their July 26th motion, assured the Court that the matter was all settled . . .

The Appellant presents to this Court that the Respondents are trying to recollect what was dismissed in 1999 and not appealed. Simply stated, they have added the "outlawed debt" and more. Such false representation violates the FDCPA. *See Kimber v. Federal Financial Corp.*, 668 F. Supp. 1488 (M.D. Ala. E.W. 1987). Further, such practice of collecting debt or any portion thereof without verification is proscribed and labeled as deceptive, unfair, unconscionable, abusive and harassing within the meaning of FDCPA – 15 U.S.C. § 1692f and d. Subchapter § 1692f states "A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt" and Subchapter § 1692d admonishes "A debt collector may not engage in any conduct the natural consequence of which is to harass or abuse any person in connection with the collection of a debt."

Similarly, it is inconceivable that the late fee debt could be at $301.25 in September 2000 when only two of the three assessment dues ($210 of $320.00) were withheld

by that time (*see* Appell. Affid. Exh. E, AP-36). The late fee debt actually exceeds the actual debt. On a similar note, the Appellant also disputes the inflated late fee debt as claimed by the Respondents in March 2001 at $601.25 exactly doubled in six months. This claim is outrageous, unconscionable and unjustified in the absence of forthright verification. The Respondents are inflating it to their own liking.

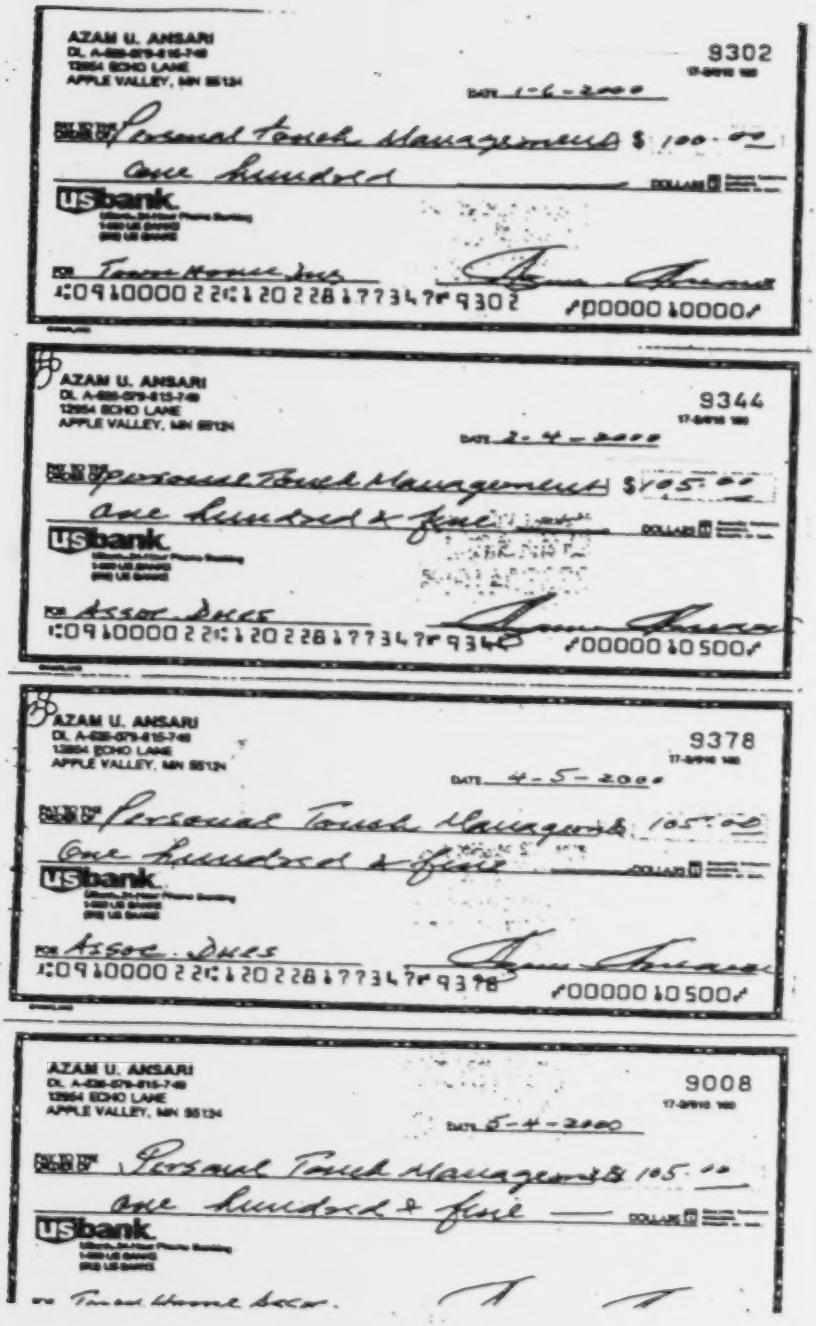
The Respondents also unfairly claim that . . . the Appellant's assessment dues for October 2000 were not paid. This is also a misrepresentation of the fact. The Appellant opposes this claim because he indeed paid the October 2000 assessment dues on October 12, 2000 . . . However, the Respondent did not process his payment until November 14, 2000 . . . The Appellant submits to this Court that late fees were more likely added to this portion of the debt also because of the Respondents' improper accounting methods, evidence of which was presented to the same court which agreed with the Appellant's assertion at the February 19, 1999 hearing.

By their persistent failure and denial to forthrightly verify the disputed debt since September 7, 2000, the Respondents have deprived themselves of the bona fide error defense. It is too late to invoke it now. They are deeply committed because of their lien foreclosure and repeated failure to verify.

The Appellant has produced clear, convincing and compelling evidence to this Court that the Respondents have misrepresented and inflated the assessment dues debt by sneaking an outlawed debt and unexplained excess late fee debt, together reflected at $1,966.25 in their public notice of lien foreclosure published in the *Dakota*

County Tribune on July 19, 2001 . . . In *Venes, Supra*, this court ruled against the Professional Service Bureau, Inc. because it tried to collect an inflated debt by stating "that such practice was deceptive, unfair, and violated FDCPA, specifically provision 15 U.S.C. § 1692f." Thus, the Respondents' lien foreclosure is unconscionable, unfair, harassing and abusive under FDCPA.

The Appellant pled Respondents' violation of the FDCPA correctly, provided evidence appropriately, and argued on merit . . . The Court erred when it failed to apply the FDCPA and its legislative and remedial purposes to the facts, and unfairly and unjustly dismissed the Appellant's pleadings and remedies sought. The FDCPA has been dealt a serious blow and consumers will suffer irreparable harm for years to come if this Appellate Court does not reverse and remand the Court's erroneous dismissal order.



AZAM U. ANSARI
DL A-638-079-815-748
13954 ECHO LANE
APPLE VALLEY, MN 55124

9302

DATE 1-6-2000

PAY TO THE ORDER OF Personal Touch Management $ 100.00

One Hundred DOLLARS

USbank.

FOR Town Home Dues

:091000022: 120228177347: 9302 ⑈00000 10000⑈

AZAM U. ANSARI
DL A-638-079-815-748
13954 ECHO LANE
APPLE VALLEY, MN 55124

9344

DATE 2-4-2000

PAY TO THE ORDER OF Personal Touch Management $105.00

One Hundred & five DOLLARS

USbank.

FOR Assoc. Dues

:091000022: 120228177347: 9344 ⑈00000 10500⑈

AZAM U. ANSARI
DL A-638-079-815-748
13954 ECHO LANE
APPLE VALLEY, MN 55124

9378

DATE 4-5-2000

PAY TO THE ORDER OF Personal Touch Management 105.00

One Hundred & five DOLLARS

USbank.

FOR Assoc. Dues

:091000022: 120228177347: 9378 ⑈00000 10500⑈

AZAM U. ANSARI
DL A-638-079-815-748
13954 ECHO LANE
APPLE VALLEY, MN 55124

9008

DATE 5-4-2000

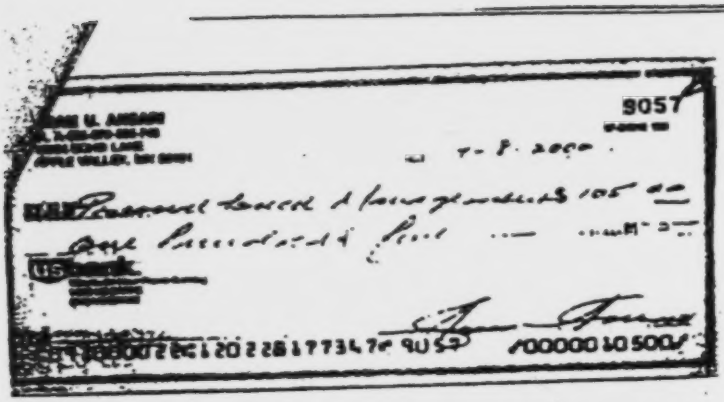
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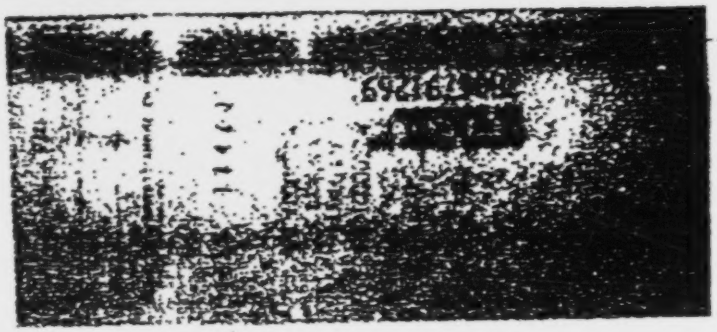
One Hundred & five DOLLARS

USbank.

FOR Town Home Assoc.

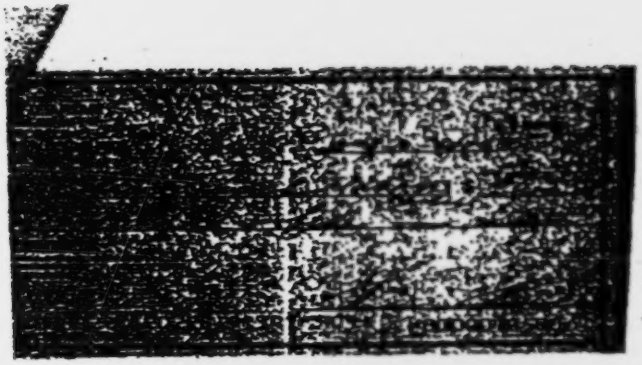
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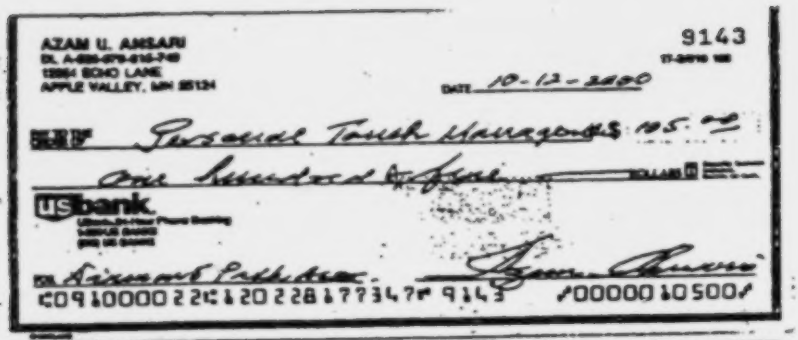
AYAN U ANSARI
12954 ECHO LN
SAINT PAUL MN 55124 8656





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IAN U ANSARI
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AZAM U. ANSARI
DL. A-639-079-615-749
12864 ECHO LANE
APPLE VALLEY, MN 55124

9143

DATE 10-12-2000

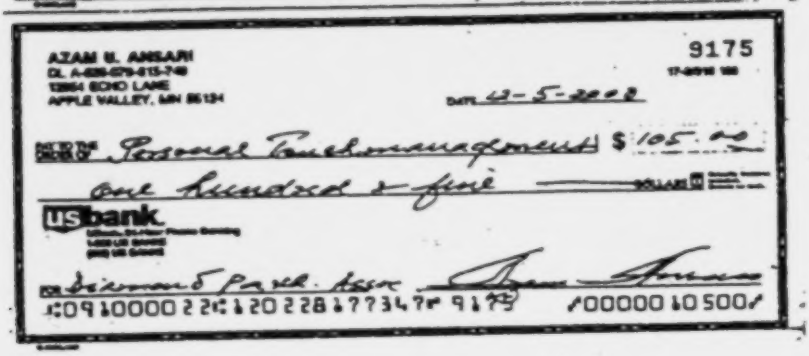
PAY TO THE ORDER OF Personal Touch Management $ 105.00

One Hundred & five

USbank.

FOR Diamond Path Assn.

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AZAM U. ANSARI
DL. A-639-079-615-749
12864 ECHO LANE
APPLE VALLEY, MN 55124

9175

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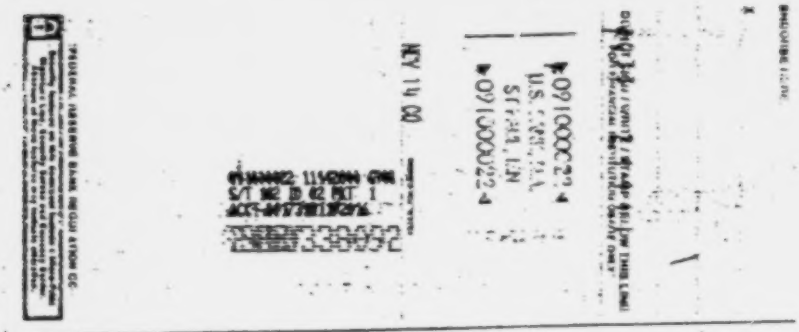
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One Hundred & five

USbank.

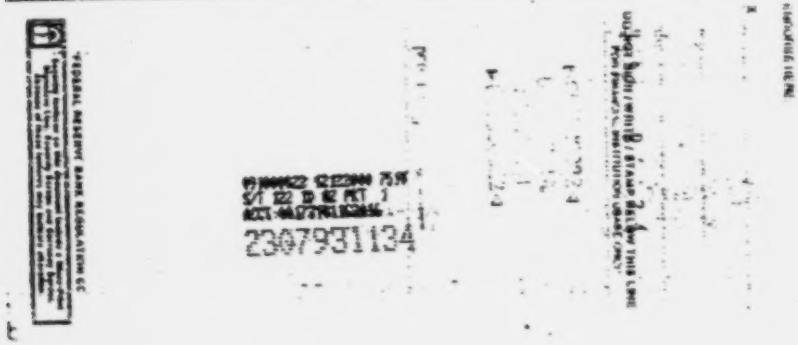
FOR Diamond Path Assn.

⑆091000022⑆ 120228177347⑈ 9175 ⑈000001050⑈


FEDERAL RESERVE BANK REGULATION CC

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⑈091000022⑈


FEDERAL RESERVE BANK REGULATION CC

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AZAM U. ANSARI
DL A-626-079-615-740
13864 ECHO LANE
APPLE VALLEY, MN 55124

9188

DATE 1-8-2001

PAY TO THE ORDER OF Personal Touch Management $ 110.00

one hundred and ten —— DOLLARS

USbank.

FOR Diamond Path Acct

⑆091000022⑆120228177347⑈ 9188 ⑈000001100⑈

AZAM U. ANSARI
DL A-626-079-615-740
13864 ECHO LANE
APPLE VALLEY, MN 55124

9412

2-1-2001 DATE

PAY TO THE ORDER OF Personal Touch Management $ 105.00

one hundred & five —— DOLLARS

USbank.

FOR Diamond Path Acct

⑆091000022⑆120228177347⑈ 9412 ⑈000001050⑈

AZAM U. ANSARI
DL A-626-079-615-740
13864 ECHO LANE
APPLE VALLEY, MN 55124

9439

2-15-2001 DATE

PAY TO THE ORDER OF Personal Touch Management $ 105.00

one hundred & five —— DOLLARS

USbank.

FOR Diamond Path Acct

⑆091000022⑆120228177347⑈ 9439 ⑈000001050⑈

AZAM U. ANSARI
DL A-626-079-615-740
13864 ECHO LANE
APPLE VALLEY, MN 55124

9462

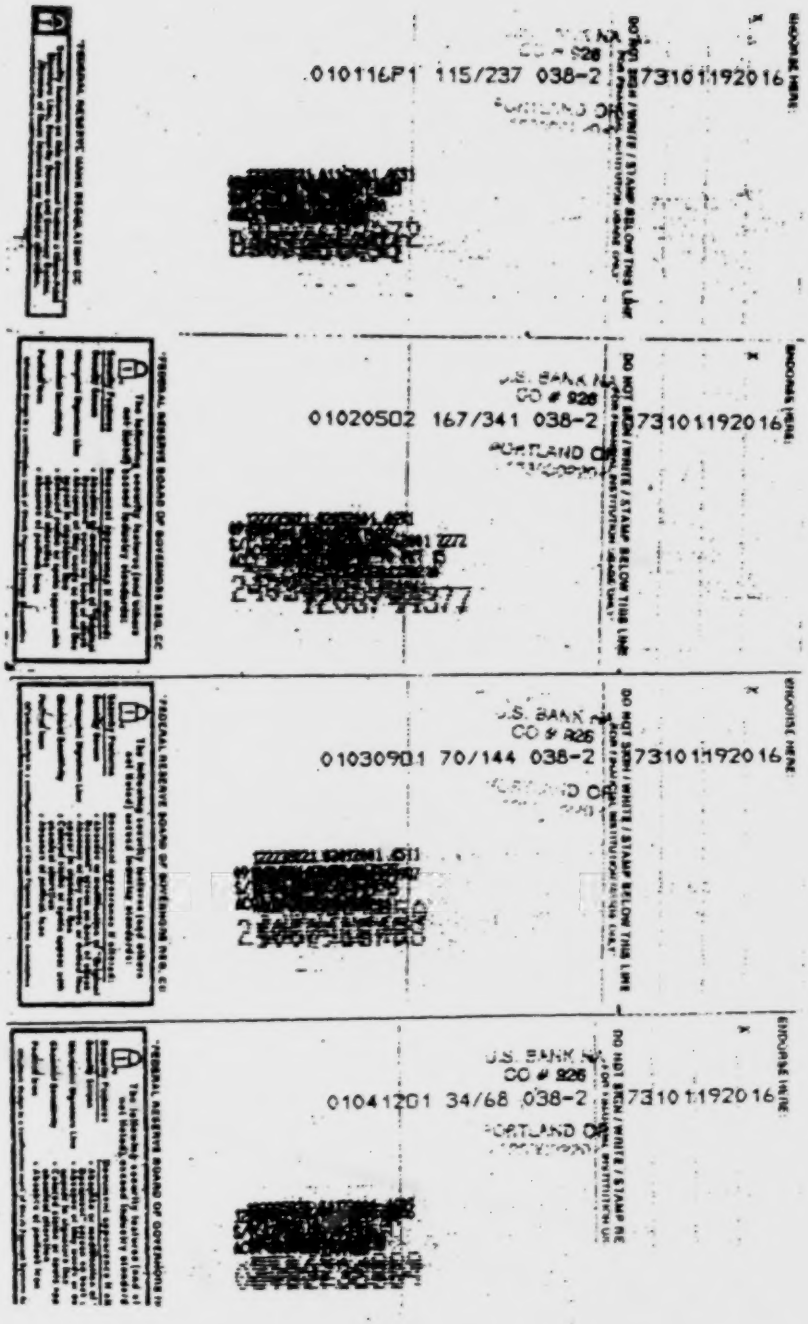
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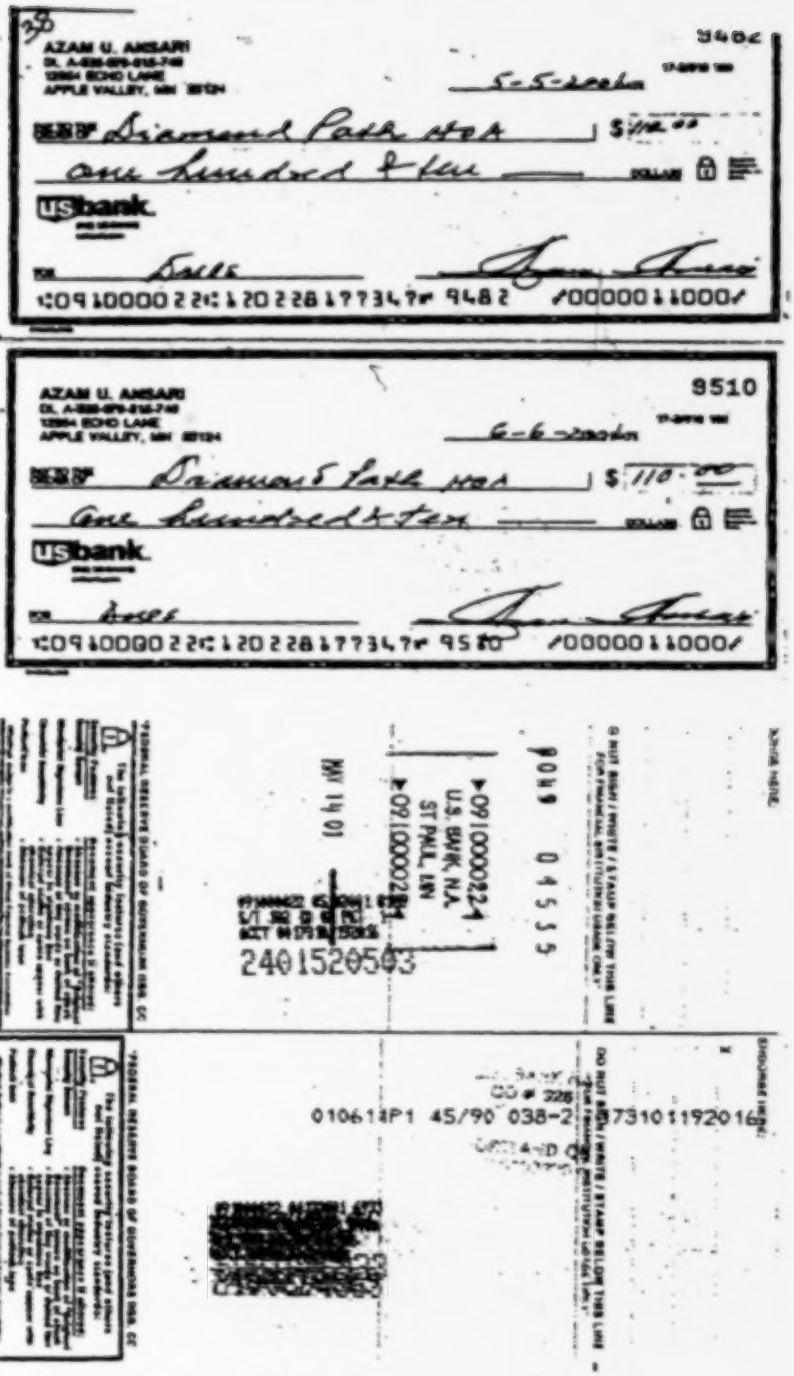
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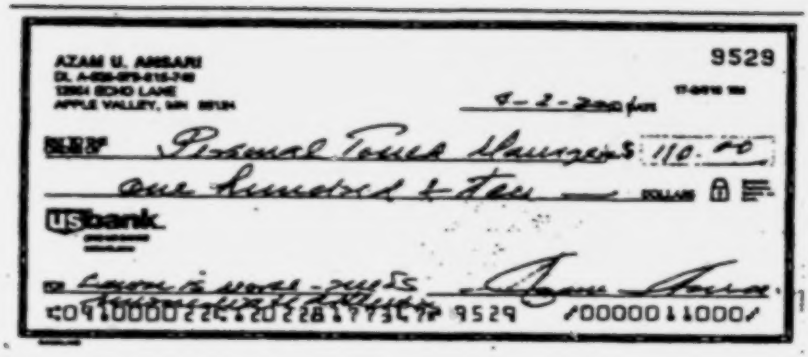
one hundred & twenty —— DOLLARS

USbank.

FOR Add'l Cost (March)


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FEDERAL RESERVE BOARD OF GOVERNORS REG. CC


AZAN U. ANSARI
12884 ECHO LANE
APPLE VALLEY, MN 55124
9482
5-5-2008
Diamond Path HOA
$ 110.00
one hundred & ten
USbank.
Dues
AZAN U. ANSARI
12884 ECHO LANE
APPLE VALLEY, MN 55124
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AZAM U. ANSARI
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APPLE VALLEY, MN 55124

9529

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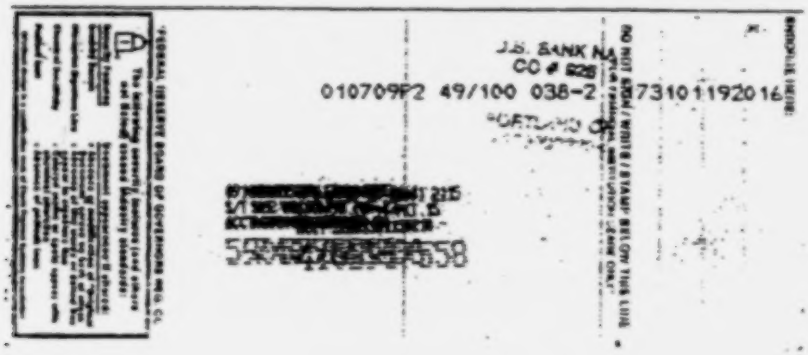
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one hundred & ten ——— DOLLARS

USbank

Taxes in year - 2001

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U.S. BANK NA
CO # 928

01070972 49/100 038-2 73101192016

The Appellant has also paid assessment dues of August to October 2001, but the evidence is not reproduced here in order to conform with the production of documents of July 19, 2001.[1] If the Court wishes to see, it will be submitted promptly.

[1] Petitioner also has paid all assessment dues since November 2001 to date.

* * *

In *Thies v. The Law Office of William A. Wyman*, 769 F. Supp. 604 (S.D. Cal. 1997), the defendants also made a motion to dismiss the case on pleadings for failure to state a claim on which relief can be granted just like the Respondents did in this instant. The *Thies* Court denied the motion on the basis that the Plaintiff who owed past due association fee debt had stated a claim under FDCPA just like the Appellant did. *Thies, Supra*, has many very close similarities with the Appellant's case. The only dissimilarity between the two cases is in the outcome. In *Thies, Supra*, the defendants were *rightly denied* their motion, and in this instant, the defendants were *wrongly granted* their motion; both decisions involved the identical application of FDCPA – one correctly applied and the other failed to apply at all (emphasis added).

* * *

In *Thies, Supra*, the plaintiffs noticed that a common area adjacent to their unit was in disrepair. They were unsuccessful in their attempt to have the association maintain or repair the area. Based on the association's failure to respond to their requests, the plaintiffs withheld their association fee for two months just like the Appellant did for three months. There was no other viable alternative available to either of them. The debt, thus created, was within the meaning of FDCPA . . .

* * *

XVIII THE RESPONDENTS HAVE NOT RESPONDED TO THE APPELLANT'S DISCOVERY REQUESTS.

Pursuant to Minn. R. Civ. Pro. 33.01(a), the Appellant served upon the Respondent his first set of Interrogatories and Request for Production of Documents postmarked June 29, 2001. The rule mandates a response *within* 30 days of service unless the court grants an extension (emphasis added). The Appellant received no response to his discovery requests due by *July 29, 2001* (emphasis added). The dismissal order in this case was not filed with the court until August 2, 2001, parties were not informed until August 3, 2001, and judgement was not entered until August 28, 2001. Accordingly, the Respondents have defaulted on the Appellant's first set of Interrogatories and Request for Production of Documents due July 29, 2001. The Appellant has an absolute right to have the Respondent's answers and documents to further his case before the court. In particular, he needs answers to his interrogatories of the Respondents' business dealings with Springer Collections of St. Paul, whose dismissed claim and outlawed debt of 1999 has been deceptively incorporated by the Respondents in this instant.

In contrast, the Respondents harassed the Appellant in their *July 2, 2001* letter by stating that his answers to their first set of Interrogatories and Request for Production of Documents were *overdue* when, in fact, their discovery request to the Appellant was postmarked *June 20, 2001* . . . (emphasis added). Further, on July 26, 2001, the Respondents moved the court to compel discovery from the Appellant when, in fact, they had already received the Appellant's response postmarked on July 19, 2001, seven

days before the hearing and five days before filing of such hearing.

The Respondents' failure to adhere to Minn. R. Civ. Pro. 33.01(a) is akin to their failure to adhere to their own By-Laws, Declaration 9.1, as well as the Federal-State Acts. The Respondents should be ordered to submit their answers to the Appellant's interrogatories and request for production of documents served on them on June 29, 2001; otherwise they are liable for obstruction of justice and the remedies which flow from such violation.

XIX. THE APPELLANT WAS PREJUDICED BY THE COURT WHEN IT IGNORED HIS VALID OBJECTIONS TO THE IMPROPER SERVICE AND FILING OF THE RESPONDENTS' MOTION HEARD ON JULY 26, 2001.

Minn. R. Civ. Pro. 6.04 and 6.01 require a minimum of five days after service for motions, not counting Saturdays, Sundays, holidays and the day of hearing. The Respondents' motion was postmarked July 21, 2001 . . . which was Saturday. The District Court and the Appellant both received the motion on Monday, July 23, 2001, only *three days* before the hearing date (emphasis added). This was an independent motion, for judgment on pleadings. The Appellant had to work overnight in order to prepare and submit a response . . . for the court at least a day before the hearing. He requested a dismissal on the basis of improper service of motion (improper service of motion in a manner not complied by a rule is ineffective), or alternatively, a continuance needed to prepare adequately. Despite admittance and excuses by the Respondents of the improper service . . . the Court ignored the Appellant's

valid objection completely. This is yet another example of the Court's prejudicial and lopsided decision.

Interestingly, under similar circumstances, the same District Court allowed a three-week continuance to the Respondent, DPHA, when it was being represented by another attorney in January 1999. Such disparate treatment of the Appellant under similar circumstances and similar application of Minn. R. Civ. Pro. exemplifies continued "*Un*Equal Justice Under Law" at the Court (emphasis added). The Appellant believes that in all fairness the Court should have deferred the hearing and determination thereof until the Appellant received the Respondents' answers to his first set of interrogatories and request for production of document due on July 29, 2001. The Respondents had received theirs from the Appellant a week before the hearing.

XX. THE APPELLANT'S MOTION TO AMEND COMPLAINT UNDER MINN. R. CIV. PRO. 15.01 IS JUSTIFIED AND SHOULD HAVE BEEN GRANTED.

The Appellant filed a motion postmarked July 24, 2001 with the Court pursuant to Minn. R. Civil Pro. 15.01 to amend the original complaint . . . to include a Temporary Restraining Order under Minn. R. 65.01 with a subsequent Temporary Injunction hearing under Minn. R. Civ. Pro. 65.02, along with an additional count against Mr. Fine for proceeding with lien foreclosure without forthright verification of the disputed debt – a violation of the FDCPA.

This important motion was set for hearing on August 3, 2001, at 9:00 a.m. It met the requirement of notice of at

least five days, excluding holidays, under Minn. R. Civ. Pro. 6.01 and 6.04. The filing of this motion was further appropriate and timely (*see* Minn. R. Civ. Pro. 115.07) in view of the fast-approaching lien foreclosure on August 30, 2001.

By virtue of the merits of this case, evidence submitted, the liberal leave usually given by the courts in this regard, the failure of the Respondents to serve and file an appropriate response [writing a letter to Court Administrator . . . to dismiss and citing inappropriate Minn. R. Civ. Pro. 115.09 as a reason cannot be considered motion responsive papers], failure of the Respondents to appear at the hearing and no judgement entry on the order until August 28, 2001, this motion should have been granted in favor of the Appellant. Minn. R. Civ. Pro. 115.06 provides that "if responsive papers are not served and filed, the court may deem the motion unopposed and may grant the relief requested without a hearing."

The Appellant responded to the Respondents' letter . . . Neither the Appellant nor the Special Term Judge, Honorable Timothy J. McManns, were aware of the court's filing of the dismissal order of August 2, 2001, until after the Appellant was called upon for his argument before the court and began responding to the Judges' questions . . . [Curiously, neither Judge McManus nor his Court clerk called the Respondents to see if they were also present in the Courtroom . . .] However, during the proceeding while reviewing the Court file, Judge McManns saw the dismissal order (lacking judgement entry) instruction and date of such entry) and informed the Appellant that he was striking the matter from the calendar . . .

The Appellant is perplexed at the following paradox. Minn. R. Civ. Pro. 58.01 states that a judgement is

effective only when entered as provided in Rule 79(a). Based on this rule, the Appellant was not allowed to perfect an appeal for this court until judgement was entered by the District Court. How then, was it possible for the court to strike the hearing from the calendar when judgement entry instruction and date of such entry were lacking on the dismissal order?

* * *

CONCLUSIONS

* * *

9. Opine about the Respondents' violations of MCIOA.

10. Opine about the Respondents' violations and default of their own By-Laws and Declaration 9.1 under MCIOA.

11. Opine about the Respondents' failure to respond to the Appellant's first interrogatories and request for production of documents.

12. Opine about any other appropriate relief under the premise.

Respectfully Submitted,

/s/ Azam Ansari
Azam Ansari
Appellant Pro Se
12954 Echo Lane
Apple Valley, MN 55124
Tele: (612) 333-7010
Fax: (612) 321-0331

October 24, 2001

C3-01-1674

State of Minnesota

IN COURT OF APPEALS

AZAM ANSARI,

Appellant,

vs.

DIAMOND PATH HOMEOWNERS' ASSOCIATION AND ROBERT B. FINE, ESQ.,

Respondents.

APPELLANT'S REPLY BRIEF AND APPENDIX

* * *

Besides, in *Thies* V. the *Law Office of William Wyman*, 969 F. Supp. 604 (S.D. Cal 1997), the Court stated that a "home owner's association" such as DPHOA managed by the Respondents is akin to a health club or such other exclusive group. A homeowner, by purchasing the property, becomes a "member of a club." With the payment of the dues comes the services provided by the association (not in this instant case of course) – use of the common areas *improved and maintained* with the dues. (emphasis applied) The Court also maintained that "the upkeep of such common areas serves the purpose of preserving the aesthetic nature of the housing development for the use and *enjoyment* of each association members." (emphasis applied) The Respondents mistakenly believe that repeated complaints to PTMC by one person does not carry weight . . . In the above analogy of the *Thies* Court, even if

one member of the health club complains several times and presents evidence of damage and lack of proper maintenance of the services, would the health club simply go in an inactive mode, waiting until more complaints are registered? Obviously not. such arrogant business strategy will back fire. Similarly, would the health club manager tell the complaining member that nothing will be done, the only recourse he has is to vote to replace the Board of Directors of the health club?

* * *

vi. The Appellant's obligation to pay homeowners association for three months in the year 2000 was transaction within the meaning of the FDCPA and that the fees for maintenance of common area by the Respondents were primarily for persona, family and household purpose within the meaning of the FDCPA. *See Thies v. The Law Office of William Wyman Supra*. The *Thies* court ruled as such the Plaintiff have stated a claim under the FDCPA. The Appellant has relied on this opinion and presents to this Court that he indeed has stated a claim under the FDCPA and accordingly relief should have been granted as pleaded.

* * *

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Azam Ansari,

Plaintiff,

vs.

NOTICE OF MOTION
AND MOTION

Diamond Path Homeowners'
Association and Robert B. Fine, Esq.,

Defendants.

Court File No. 19-C2-01-8186

To: Plaintiff above-named:

PLEASE TAKE NOTICE, that the Defendants will move the Court on the 26th day of July, 2001 at 9:00 a.m., or as soon thereafter as counsel may be heard, before Special Term in the Dakota County Government Center, 1560 Highway 55, in Hastings, Minnesota, for an Order of the Court as follows:

1. For a Judgment on the Pleadings, dismissing with prejudice the Plaintiffs Complaint.

2. Alternatively, for a Judgment on the Pleadings, dismissing with prejudice, Plaintiffs complaint against the Defendant Robert B. Fine.

3. Alternatively, for an Order Compelling Plaintiff to Answer Interrogatories within 14 days or dismissing his Complaint with prejudice.

4. For Defendant's reasonable attorney fees in the sum of $1,000 for defending Plaintiff's supposed motions, on short notice, and for failure to respond to discovery.

5. For such other and further relief as to the court is just and equitable.

Dated: July 19, 2001

/s/ Robert B. Fine
Robert B. Fine, #29221
Attorney for Defendants
P.O. Box 24192
Edina, MN 55424-0192

Robert D. Fine
Attorney At Law
P.O. Box 24192
Edina, Minnesota 55424-0192



Mr. Azam Ansari
12954 Echo Lane
Apple Valley, MN 55124

Recieved
7/23/2001
at 3P.M

55124-8636 24

EXHIBIT 1

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Azam Ansari

Plaintiff,

vs.

Diamond Path Homeowners' Association and Robert B. Fine, Esq.,

Defendants.

Civil Court File No.
19-C2-01-8186

PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF MOTION AND MOTION

To: Defendants above-named.

Plaintiff will submit to the Court that Defendants Notice of Motion and Motion on the 26th day of July, 2001, at 9 a.m. lacked proper service as per Minnesota Court Rules of Civil Procedure (Rule 6.01).

Plaintiff received service after 3 p.m. on July 23, 2001, only three days before the scheduled hearing. This is unacceptable because it ignores the provisions provided by law, and Defendants knew or should have known about it.

Defendants' Motion for an order to compel Discovery is unjustified because it was served on them in a timely manner.

Plaintiff requests for orders of the Court as follows:

1. Dismissal of the Defendants' improperly serviced Motion with prejudice because of

failure to comply with Minnesota Court Rules of Civil Procedure (Rule 6.01).

2. Alternatively, a reasonable continuation date allowing sufficient time for Plaintiff to prepare and present before the Court.

3. Plaintiff's reasonable attorney's fee in the sum of $1,000 for defending against Defendants' continued harassment by the improper service of their supposed Motion.

4. Plaintiff's Court costs incurred in defending this improper motion.

5. Plaintiff's out-of-pocket expenses and such others and further relief as the court deems just, fair, and equitable in the premises.

Dated: July 24, 2001

Azam Ansari
Plaintiff pro se
12954 Echo Lane
Apple Valley, MN 55124

STATE OF MINNESOTA
COUNTY OF DAKOTA

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Azam Ansari

Plaintiff,

vs.

Diamond Path Homeowners' Association and Robert B. Fine, Esq.,

Defendants.

Civil Court File No. 19-C2-01-8186

NOTICE OF MOTION AND MOTION TO AMEND PLAINTIFF'S COMPLAINT

To the Defendants named above:

PLEASE TAKE NOTICE, that the Plaintiff on August 3, 2001, at 9 a.m. or as soon as thereafter as the motion may be heard, before a judge of District Court at Special Term in the Dakota County Courthouse/Government Center, 1560 Highway 55, Hastings, MN 55033, will move the Court for:

1. An order permitting the Plaintiff to amend his complaint pursuant to Minnesota R. 15.01 to include:

    a. A Temporary Restraining Order against the Defendants under Minnesota Rule 65.01 from foreclosing by advertisement of his town home unit located at 12954 Echo Lane, Apple Valley, MN 55124 and scheduling the matter for a Temporary Injunction Hearing pursuant to Minnesota R.65.02.

b. An additional count alleging Mr. Fine violated the Fair Debt Collection Act by proceeding with foreclosure action without validating the debt, which is disputed.

2. Plaintiff's attorney fees and court costs incurred in bringing this Motion.

3. Plaintiff's out-of-pocket expense and such others and further relief as the Court may deem just, fair, and equitable in the premises.

Dated: July 24, 2001

Azam Ansari
Plaintiff pro se
12954 Echo Lane
Apple Valley, MN 55124